

**INDIAN CONSTITUTIONAL DOCUMENTS**

**1757—1945**

**VOLUME I: 1757—1858**

*By the same Author*

**RAJPUT STUDIES  
PESHTWA MADHAV RAO I  
ANNEXATION OF BURMA  
THE EASTERN FRONTIER OF BRITISH INDIA**



# INDIAN CONSTITUTIONAL DOCUMENTS

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**To**  
**The Memory of**  
**THE FOUNDERS OF THE**  
**INDIAN NATIONAL CONGRESS**



## PREFACE

This volume is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types: statutes, speeches, despatches, minutes, treaties, even private letters. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. I have not confined my attention to the well-known landmarks, like the Acts of 1773, 1784 and 1833 ; within the limitations of the available space I have tried to call my readers' notice to problems less imposing but hardly less vital—administrative problems arising directly out of Parliamentary legislation. I have also included some documents relating to British relations with the Indian States. During the period covered by this volume the problem of the States was not directly concerned with the constitutional and administrative evolution of British India ; but the importance which that problem has assumed in recent times demands a thorough acquaintance with the past. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

Due to the confusion created by the war I have not been able to approach authors and publishers for permission to print extracts from their books. For this unintentional lapse I crave their indulgence.

A. C. BANERJEE.



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## INTRODUCTION

### *The 'Trading Period': 1600—1765*

According to Sir Courtenay Ilbert, during the period 1600—1765 'the East India Company are primarily traders'. The constitution and privileges of the Company were defined by Elizabeth's famous Charter<sup>1</sup> of December 31, 1600. The control of the Company's business was invested in twenty-four committees and a Governor. These committees—not bodies, but individuals—were the predecessors of the later Directors. Of the privileges granted to the Company the most important was the exclusive right of trading 'into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the streights of Magellan.' The Company also received certain specified legislative and judicial powers, to which may be traced the origin of the later Anglo-Indian codes.

The extension of the privileges of the Company was the inevitable result of the difficulties which confronted the British merchants during their early voyages to the East. It was found necessary to enforce martial law for the maintenance of discipline on long voyages. In 1615 the necessary authority was given to the Company by a grant of James I, who had already renewed Elizabeth's Charter and made it perpetual by the Charter of 1609. The Company's power of controlling and punishing its servants was further extended by James I's grant of 1623.

During the reign of Charles I the Company suffered from two difficulties. The competition of the Dutch merchants, who were strongly supported by their Government, expelled the Company from the East Indies. Henceforward its activities were necessarily concentrated in India. Secondly, Charles I granted a licence to Sir William Courten in 1635 to trade with the East Indies. Courten's Association was generally spoken of as the Assada Company, for it had a settlement at Assada in Madagascar. Al-

<sup>1</sup> P. Mukherjee, *Indian Constitutional Documents*, pp. 1-20.

though it could not secure considerable fortunes for itself, it put the Company into many difficulties.

Cromwell rescued the Company from these difficulties. By the treaty of Westminster (1654) he secured from the Dutch a large sum of money as compensation for the massacre of Amboyna (1623) and the exclusion of the Company from the East Indies. In 1657 he granted a Charter which provided for the union of Courten's Association with the Company. But he borrowed from the Company for the expenses of the State a large sum of money which he never repaid. Thus began the policy of forcing the Company to pay for its privileges.

Charles II's charter of 1661 reorganised the Company on the joint-stock basis and considerably extended its privileges. It was given 'power and command' over its fortresses. It was empowered to appoint Governors and other officers for their administration. It was authorised to govern its employees in a legal and reasonable manner and to punish them for misdemeanour and disobedience. Moreover, the Governor and Council of each factory were empowered 'to judge all persons belonging to the said Governor and Company or that shall live under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly'. Finally, the Company might authorise its 'commanders and officers... to continue or make peace or war with any people that are not Christians, in any places of their trade.'

'The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government' proceeded a step further when, by a Charter of 1668, Charles II transferred the island of Bombay to the Company. The Company was authorised to make laws and ordinances for the good government of the port and island and of the inhabitants thereof, and also to exercise judicial authority through its Governors and other officers. In respect of military forces the Governor of the island was empowered to exercise 'all such powers and authorities' as 'any captain-general of our army. .... may or might lawfully do.' By a Charter of 1677 the Company received the right of coining money at Bombay. In 1678 the Company's officers at Madras began to exercise the judicial powers conferred upon them by the Charter of 1661.

Sir Josiah Child, whose influence was largely responsible for the conspicuous marks of royal favour received by the Company

during the Restoration period, wanted to strengthen the Company on the model of the Dutch East Indies Company and even to establish an Empire in India. So he secured a remarkable extension of the political and judicial powers of the Company. By a Charter of 1683 the Company was authorised to declare and make peace and war with any of the 'heathen nations' of Asia, Africa and America, to raise military forces and to 'execute and use' martial law. But the Crown reserved its 'sovereign right, powers, and dominion over all the forts and places of habitation' and also its 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon'. As Keith points out, here is an unmistakable expression of the fundamental rule that 'the acquisition of sovereignty by subjects of the Crown is on behalf of the Crown and not in their own right.' The same Charter strengthened the judicial administration in the Company's territories in India by providing for the establishment of a court of judicature composed of 'one person learned in the civil law and two assistants' to be appointed by the Company.

The privileges of the Company were renewed and confirmed by James II's Charter of 1686, which also authorised it to appoint admirals and other sea officers in any of its ships within the Charter limits, to raise naval forces, and to exercise martial law in the time of open hostility on the other side of the Cape of Good Hope. The Company also received the general power of coining in its forts any species of money usually coined by Indian princes.

In 1687 James II conferred upon the Company the power of establishing a municipality at Madras. According to the terms of the Company's Charter which established the municipality, the Mayor and Aldermen became a court of record, with power to try civil and criminal causes.

Once again the prospects of the Company were shattered by troubles both at home and abroad. The conflict with the Mughal Government, which began in 1686, weakened and discredited the Company.<sup>1</sup> In England the Revolution of 1688 dealt a severe blow to the influence and policy of Sir Josiah Child. In 1689 the Company passed an important resolution: "The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India;

<sup>1</sup> Sir J. N. Sarkar, *History of Aurangzeb*, Vol. V, Chapter LX.

without that we are but a great number of interlopers, united by His Majesty's Charter " The voice is unmistakably that of Sir Josiah Child ; it 'announces in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and foreshadows the annexations of the next century'. But for the time being the Company had to pass through a critical situation. A 'New Company' was formed, and in 1691 Parliament decided that the trade with the East Indies would be best carried on by a joint-stock company enjoying extensive privileges. An attempt to amalgamate the two companies was frustrated by Sir Josiah Child's obstinacy. The House of Commons thereupon requested the Crown to give the Old Company the requisite three years' notice of the determination of its Charter. At last Sir Josiah Child was able to influence the Government through lavish gifts, and in 1693 a Royal Charter confirmed the existing privileges of the Old Company, subject to its acceptance of such further regulations as might be imposed on it within a year. Two supplementary Charters (1693, 1694) changed and regulated the constitution of the Company, and further changes in this respect were introduced by a Charter of 1698.

The position of the Company was strengthened, but its complete safety was not assured, by the Charter of 1693. In 1694 the House of Commons resolved that 'all the subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament'. A resolution of the House of Commons had no legal effect, and in practice the Company was strong enough to create troubles for interlopers. But, from the constitutional point of view, this resolution marks the beginning of Parliamentary control over the Company's affairs. In the words of Macaulay, "It has ever since been held to be the doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world."

In 1698 Montagu, the Chancellor of the Exchequer, in order to extricate the State from its financial embarrassments, secured the establishment of a joint-stock company under the name of 'The English Company trading to the East Indies.' This Company was framed on the model of the Old Company and given similar privileges. It was authorised to enjoy the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent

rights of the Old Company until September 29, 1701. But the Old Company became the largest single share-holder in the English Company, and, owing to its influence in India, the privileges obtained by the English Company remained nominal. The amalgamation of the two Companies was the only logical solution of the difficulties created in 1698. That solution was effected in 1702 through the intervention of Lord Godolphin. Henceforward the trade of the two Companies was to be carried on jointly in the name of 'The United Company of Merchants of England Trading to the East Indies'<sup>1</sup> by 24 managers, half selected by either Company. In 1709 the managers became Directors under the first Charter granted by Queen Anne to the United Company. By an Act of 1708 the Company was required to advance to the Crown a large sum of money, and secured in return the continuance of its privileges at least until 1729. Different Acts passed in 1711, 1730 and 1744 extended the duration of the Company's privileges to 1780; in return the Company had to advance further loans and to reduced interest on existing loans.

In 1726 a Royal Charter was granted, establishing or reconstituting municipalities at Madras, Bombay and Calcutta. At each settlement the Mayor's Court was invested with civil jurisdiction, and provision was made for a regular system of appeal from this court to the Governor and Council and thence to the King in Council. Authority was given to the Governors and Councils of the settlements to make bylaws and ordinances, which had to be confirmed by the Court of Directors. Thus subordinate legislative bodies were established in India. According to some judicial authorities, the English criminal law was introduced at the presidency towns of India by the Charter of 1726. The capture of Madras by the French in 1746 made it necessary for the Company to surrender the Charter of 1726, and a new Charter was granted in 1753. This Charter excluded from the jurisdiction of the Mayor's Court all suits and actions between Indians, unless both parties submitted them to the determination of that court.

The outbreak of war between England and France in 1744 and the extension of their hostilities to India in 1746 made it necessary for the Company to strengthen its European force by creating an Indian army. In 1748 a small body of sepoy was raised at Madras. Further legislation now became necessary for

<sup>1</sup> The Charter Act of 1833 used the shorter name: The East India Company.

the maintenance of military discipline. An Act of 1754 laid down for the Company's Indian troops provisions on lines similar to those of the English Mutiny Acts.

Two later Charters (1757, 1758) regulated the distribution of booty and the cession of territory. In 1758 the Company was granted the power, by treaty of peace made with any Indian Prince or Government, to cede, restore, or dispose of any fortress, district or territory acquired by conquest from any Indian Prince or Government; but in the case of territories acquired from the subjects of any European Power the Company could not exercise these rights without the special licence of the Crown.<sup>1</sup>

Sir Courtenay Ilbert observes, "British authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India."<sup>2</sup> In the above paragraphs we have referred very briefly to some salient features of the grants received by the Company from the British Crown and Parliament during the period 1600—1758. During the same period it received from 'the Great Mogul and other native rulers of India' some remarkable concessions which conferred upon it partial rights of territorial sovereignty. In 1639 the local Hindu chief of Wandiwash granted the Company the right of building a fortress, of minting money, and of governing Madras under certain conditions. In 1672 Madras came wholly under British control, and no local Indian authority was left there. The sovereignty of the Mughal Empire was formally expressed in the payment by the Company of a quit rent, and the Mughal authorities permitted the Company to coin at Madras only a particular pattern of the rupee. In 1752 the Nawab of the Carnatic, the local representative of the declining Mughal Empire, renounced the quit rent; the Company's authority in the town of Madras became absolute.

On the conclusion of the hostilities with the Mughal Government the Company established a settlement at Sutanati (the site of the future Calcutta) in 1690. Six years later the factory was fortified. In 1698 the Company purchased the *zamindari* right (*i.e.*, the right to collect the revenue and exercise civil jurisdiction) in the three villages of Sutanati, Calcutta and Govindapur. In 1717 John Surman procured from Emperor Farrukhsiyar three *firman*s, one of which, addressed to the *Subadar* of Bengal,

<sup>1</sup> See *Cambridge History of India*, Vol. V, p. 593.

<sup>2</sup> Document No. 27.



authorised the Company to acquire some villages near Calcutta. But Murshid Quli Khan, who governed Bengal almost as an independent Sovereign, made it impossible for the Company to acquire villages in terms of the Imperial *firmān*.

In 1757 Siraj-ud-daula, Nawab of Bengal, confirmed by a formal treaty the privileges of the Company and permitted it to fortify Calcutta and also to coin money. After the battle of Plassey the territorial power of the Company in Bengal was extended and consolidated.<sup>2</sup>

### *Double Government in Bengal*

The battles of Plassey (1757) and Buxar (1764) practically invested the Company with the territorial sovereignty of Bengal, Bihar and Orissa; but 'the obvious moral of 1764' was not recognised, and the policy of using the Nawab's name as a veil over the Company's power was deliberately adopted.<sup>3</sup> The treaty with Najm-ud-daula<sup>4</sup> and the grant of *Dewani* by Emperor Shah Alam<sup>5</sup> put the Company in absolute control over the Nawab's military forces and revenue administration. The actual administration was, however, left to four deputies of the Nawab, who were virtually nominees of the Company. Thus the Nawab was left as 'a mere pageant and a shadow,' but the Company did not assume responsibility for the good government of the provinces.

This anomalous plan of a Double Government naturally failed.<sup>6</sup> As Verelst pointed out, "such a divided and complicated authority gave rise to oppressions and intrigues unknown in any other period." In 1772 Warren Hastings gave effect to the resolution of the Court of Directors 'to stand forth themselves in the character of *Dewan*'.<sup>7</sup> The *Nizamat* was also taken over from the Nawab, and the seat of government was transferred from Murshidabad to Calcutta. The question of the Nawab's sovereignty was raised in two cases decided by the Supreme Court<sup>8</sup> in 1775. In one of these cases the Chief Justice concluded, "Nothing is left to Mubarak<sup>9</sup> but an empty title."<sup>10</sup>

<sup>1</sup> Document No. 1.

<sup>2</sup> Document Nos. 2, 4.

<sup>3</sup> Document No. 1.

<sup>4</sup> Document No. 3.

<sup>5</sup> Document Nos. 5, 6.

<sup>6</sup> Document No. 7.

<sup>7</sup> See I. Banerjee, *The Supreme Court in Conflict*, pp. 154-163.

<sup>8</sup> Nawab Mubarak-ud-daula.

<sup>9</sup> Document No. 15.

*Parliamentary intervention, 1767—1786*

The establishment of the Company's territorial sovereignty in Bengal, Bihar and Orissa was a direct prelude to Parliamentary intervention in its affairs, and the immediate cause of intervention was financial. "The eyes of the proprietors of the Company were dazzled by golden visions." After the grant of *Dewani* they raised the dividend from 6 per cent., at which it had been for many years, to 10 per cent. in 1766, and in 1767 to 12½ per cent. Speculation in India Stock naturally began. The shadow of the South Sea Bubble was still dimly hanging over England; the Government could not avoid the responsibility of preventing disaster by the adoption of precautionary measures. In 1766 Parliament instituted an inquiry into the Company's affairs at Chatham's instigation. At once it became clear that the inquiry would not be limited to the question of the dividend. Chatham, under whose able guidance the Seven Years' War had consolidated and strengthened the Company's position in India,<sup>1</sup> held that the acquisitions of the Company really belonged to the Crown. Similar views were also held by Lord North. Serious steps might have been taken against the Company; but Chatham's illness placed the matter in the hands of Charles Townshend, who was inclined to spare the great corporation as much as possible. Respect for charter rights was very strong in the eighteenth century; the extension of the control of the Crown over the territories acquired by the Company was regarded by Whigs and Tories alike as an infringement of its Charter. The result was that the Company bound itself to restrict the dividend to 10 per cent. and to pay £400,000 annually into the Exchequer in respect of its territories and revenues.<sup>2</sup> It was not a satisfactory arrangement, but it was an important recognition by the Company of the sovereign rights of the Crown. Thus Townshend's haphazard compromise marks the beginning of serious Parliamentary intervention in the affairs of the East India Company.

In 1769 a new agreement was made by Parliament with the Company for five years, during which period the Company was

<sup>1</sup> Horace Walpole wrote, "Half the empire of Hindostan, conquered under his Administration by the spirit he had infused, still pours its treasures into the Thames."

<sup>2</sup> Townshend's Acts of 1767 (Geo. III, cc. 56, 57)—Keith, *Speeches and Documents on Indian Policy*, Vol. I.

empowered to enjoy the territorial revenues of India in exchange for an annuity of £400,000. But the Company was approaching the verge of bankruptcy, and in 1772 it had to confess its inability to pay the annuity. Lord North, who had become Prime Minister in 1770, was not prepared to give up so large a sum as £400,000. That characteristic indolence and indecision which contributed so much to the loss of the American colonies found expression in makeshift arrangements with the Company. In these transactions between the Government and the Company the only important factors were the question of the dividend, the demand of the British Treasury and the stability of the London Stock Exchange; the interests of 'the unhappy Natives'—to use Burke's phrase—found no hearing.

Even when it became clear that a drastic remedy was called for, Lord North remained as unwilling as ever to take the initiative. It was certainly strange for a Prime Minister to wait till somebody took some interest in the affairs of India and demanded a solution. Fortunately Colonel Burgoyne moved that a Select Committee be appointed. Lord North's biographer says, "It relieved him of responsibility; it gave him time. In an excess of gratitude, he promised every assistance in the consideration of such reports as the Committee might make."<sup>1</sup>

While the Prime Minister was turning the pages of Colonel Burgoyne's reports in his pleasant country house in Somerset, the Company could not meet its bill and pay its dues to the Treasury. Whitehall was anxious; the Stock Exchange was disturbed. Obviously some decisive step had to be taken without delay. Lord North's habitual unwillingness to face a crisis was rudely shocked by a pointed hint from the King. "Till now", George III wrote to him, "the conduct you have held towards the Directors is much to your honour, but any wavering now would be disgraceful to you and destruction to the public, but I know you too well to harbour such a thought".<sup>2</sup>

This brief summary of the circumstances leading to the passing of the Regulating Act brings some conclusions into clear relief. In the first place, Parliamentary interference in Indian affairs was conditioned exclusively by financial and political factors

<sup>1</sup> Pemberton, *Lord North*, p. 169.

<sup>2</sup> *Correspondence of George III*, Vol. III, p. 407.

operating in Great Britain; for 'the unhappy Natives' their new rulers had hardly any political or moral responsibility. Secondly, even if the British Government had any desire to provide for good government in India, expert advice and necessary facts were not available. The only persons competent to advise the Government were the 'voracious Birds of Passage' whom Burke detested. Lord North consulted Clive, but this consultation does not seem to have produced much effect. Thirdly, Lord North was not the man to take any strong and decisive measure. Habitual indolence, coupled with the desire to 'let sleeping dogs lie,' led him to leave the *status quo* as much undisturbed as possible. He declared in the House of Commons, "There must be constant inspection of Parliament over the conduct of the Company."<sup>1</sup> But the machinery which he created to make Parliamentary inspection a reality very soon developed disconcerting cracks. Perhaps Lord North was conscious of the defects of his legislative child, for he declared, "I do not rest my reputation upon having proposed a law that is to be invariable, that no circumstances, that no case, is to alter. Let the circumstance and the case arise such as ought to convince the world (that there is need of) some alteration, I shall thank the man who proposes and willingly alter, but I must go on in a course I have unwillingly begun, (in) a duty I have unwillingly begun, till I find it unwise to continue, or impossible."<sup>2</sup>

Chatham described the Regulating Act<sup>3</sup> as 'an attempt towards Reformation'<sup>4</sup> Unfortunately the attempt was one-sided, and confined to London. Lord North claimed that he was conscious of 'the sufferings of the people' in India, but in his view these sufferings 'had not proceeded from a want of political freedom so much as a want of government of the Europeans, the servants of the Company, and those who are protected by the servants of the Company.'<sup>5</sup> The only measure he could devise for removing this 'want of government of the Europeans, the servants of the Company' was the establishment of the Supreme Court. How the Supreme Court contributed to the alleviation of 'the sufferings of the people' is well-known to all serious students of modern

<sup>1</sup> Pemberton, *Lord North*, p. 171.

<sup>2</sup> Pemberton, *Lord North*, p. 174.

<sup>3</sup> Document No. 9.

<sup>4</sup> Pemberton, *Lord North*, p. 176.

<sup>5</sup> Pemberton, *Lord North*, p. 173.

Indian history. Englishmen were accustomed to look to the Judiciary for protection against the illegal highhandedness of the Executive ; they had no idea that a Judiciary created by defective legislation, hampered by the duty to enforce an alien legal system, and obsessed by exaggerated ideas of power and prestige might easily become an engine of oppression.<sup>1</sup>

Lord North deserves great credit for realising that the affairs of the Company could not be placed on a proper footing unless the influence of the Proprietors could be curtailed and the position of the Directors made less dependent upon them. So he provided that instead of the entire Court of Directors being elected annually, six should be elected at a time for period of four years. Longer tenure would make it possible for the Directors to shake off to some extent the influence of the Proprietors and bring to the executive that stability and strength which it had so long sadly lacked. The number of Proprietors entitled to vote was reduced by the provision that they had to possess stock worth £1,000 (instead of £500) and to have held it for at least twelve months. This arrangement was intended to make the Court of Proprietors less chaotic and irresponsible.

Lord North's Bill was severely criticised from different quarters. The City of London petitioned against it. Dowdeswell described it as 'a medley of inconsistencies dictated by tyranny, yet bearing throughout each line the mark of ignorance'. Burke used strong words.<sup>2</sup> An elaborate summary of the objections urged against the Bill is found in the *Protest* of 13 Peers.<sup>3</sup> This *Protest* is a clear vindication of the Whig respect for rights of property, but we look in vain for any trace of anxiety for the good government of the Company's territories.

The principal defects of the Regulating Act may be briefly enumerated. In the first place, Warren Hastings could not work in harmony with the members of the Council ;<sup>4</sup> it was only after Clavering's death (November, 1776) that he was able, by means of his casting vote, to maintain his supremacy in the Council. It was a mistake to make it obligatory for the Governor-General to act according to the decisions of the majority in the Council. This mistake was not rectified by Pitts' India Act.<sup>5</sup> When Lord

<sup>1</sup> Document Nos. 14, 17, 19, 20, 21, 22.

<sup>2</sup> Document No. 12.

<sup>3</sup> Document No. 13.

<sup>4</sup> Document No. 16.

<sup>5</sup> Document No. 24.

Cornwallis was appointed Governor-General, he made it a condition of accepting that post that his powers should be increased. That demand was accepted by Pitt's Government, and in 1786 an Act was passed which authorised the Governor-General in special cases to override the majority of the Council and act on his own responsibility.<sup>1</sup> This exceptional power of the Governor-General was also recognised by the Charter Act of 1793.<sup>2</sup>

Secondly, the provisions of the Regulating Act 'are 'obscure and defective as to the nature and extent of the authority exercisable by the Governor-General and his council, as to the jurisdiction of the supreme court, and as to the relation between the Bengal Government and the court.'<sup>3</sup> No definite solution was provided for fundamental questions like the following : How far could the Supreme Court question and settle the legality of acts performed and orders issued by the Governor-General in Council ? What law was the Court to administer ? To whom was this law to be administered ? An amending Act of 1781, which was preceded by a Parliamentary inquiry into the administration of justice in Bengal, decided some of these disputed questions in favour of the Council and against the court.<sup>4</sup> This Act also authorised the Governor-General in Council 'to frame regulations for the provincial courts and councils'. This is an important landmark in the history of legislation in India.

Thirdly, Section 9 of the Regulating Act invested the Supreme Government with imperfect control over the subordinate Presidencies. This half-hearted attempt to create a central authority for the Company's territories in India was bound to fail, for the latitude given to the subordinate Presidencies was wide and vague. That the system contemplated by Lord North was altogether unworkable was clearly proved by the trouble created by the Governments of Madras<sup>5</sup> and Bombay<sup>6</sup> during the administration of Warren Hastings. So Section 31 of Pitt's India Act deprived the subordinate Presidencies of those loopholes which they had fully utilised for a few years.<sup>7</sup>

<sup>1</sup> 26 Geo. III, c. 16.

<sup>2</sup> Sections 47-51, Document No. 33. Also Document Nos. 31, 32.

<sup>3</sup> Document Nos. 9, 14, 17, 19, 20, 21, 22.

<sup>4</sup> See Ilbert, *The Government of India*, pp. 55-58.

<sup>5</sup> See A. P. Das Gupta, *The Central Authority in British India*.

<sup>6</sup> See Chesney, *Indian Polity*, 3rd Edition, p. 41.

<sup>7</sup> Document Nos. 29, 39.

Two Parliamentary Committees on Indian affairs were appointed in 1781. Their reports revealed many defects and abuses in the Company's system of administration in India. The House of Commons resolved that Hastings and Impey should be recalled, but the Court of Proprietors persisted in retaining Hastings in office. In 1783 Fox tried to solve the problem by increasing the control of the Crown over the Company at 'home' and also over its officers abroad.<sup>1</sup> After the fall of the Fox-North Coalition Ministry Pitt secured the passing of that famous Act<sup>2</sup> which, with some alterations, formed the basis of the Indian constitution till the transfer of India to the Crown in 1858. He allowed the Company to retain its patronage, and he left the old constitution of the Company substantially unaltered; but, as Ilbert points out, he followed the principle adopted by Fox—'the principle of placing the Company in direct and permanent subordination to a body representing the British Government.'

Fox's criticism<sup>3</sup> of Pitt's Bill was statesmanlike. It undoubtedly 'provided for a weak government at home by the division of the power'; it 'absurdly gave the power of originating measures to one board, and the nomination of officers for the execution of those measures to another.' These difficulties were felt by Lord Palmerston more than seventy years later.<sup>4</sup> There were many occasions of friction between the Court of Directors and the Board of Control.<sup>5</sup> Yet the 'cumbrous and dilatory procedure' of Pitt's Act and its 'elaborate system of checks and counter-checks' worked tolerably well in practice, except on rare occasions when headstrong men like the Earl of Buckinghamshire and Lord Ellenborough created troubles.<sup>6</sup> It is significant that the Company itself justified this system in its swan song.<sup>7</sup>

### *Charters, 1793—1853*

Pitt's India Act was followed by the Charter Act of 1793<sup>8</sup>, which was prepared by Henry Dundas, President of the Board of

<sup>1</sup> Document No. 23.

<sup>2</sup> Document Nos. 24, 25.

<sup>3</sup> Document No. 26.

<sup>4</sup> Document No. 53.

<sup>5</sup> Document No. 36. See also Ilbert, *The Government of India* pp. 68-69.

<sup>6</sup> Document No. 46.

<sup>7</sup> Document No. 57.

<sup>8</sup> Document Nos. 30, 33.

**Control.** No great constitutional change was introduced by this statute of consolidation.

An Act of 1797 provided that the provincial courts of justice would be bound by the regulations framed and issued by the Governor-General in Council. Similar powers of making regulations were given to the Governors and Councils of Madras and Bombay by an Act of 1807.

An Act of 1800 provided for the constitution of a Supreme Court at Madras.

In 1808 a Committee<sup>1</sup> of the House of Commons was appointed to inquire into the financial difficulties of the Company which were largely due to the policy of war and annexation pursued by Lord Wellesley. The Continental System introduced by Napoleon had closed the European ports to British trade, and it was no longer found possible to continue the Company's monopoly of trade with India. So that trade was thrown open to all British merchants, but the Company was allowed to retain its monopoly of the trade and also the trade with China. The preamble to the Charter Act of 1813 declared that it was expedient to continue to the Company for a further term the possession of the territories in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown in and over the same'. The constitutional position of the British territories in India was thus explicitly defined.

An Act of 1823 provided for the constitution of a Supreme Court at Bombay.

The Charter Act of 1833<sup>2</sup> introduced important constitutional changes. The provisions of the Act should be studied with special reference to Macaulay's speech in the House of Commons<sup>3</sup> and the Despatch of the Court of Directors.<sup>4</sup> This important enactment was directly connected with the triumph of Whiggism in England. Macaulay himself was Secretary to the Board of Control and James Mill was the Examiner of Correspondence at the India House. Their influence may be clearly traced in the Act itself and also in the explanatory Despatch. Macaulay's remarks on Indian laws cannot be understood except against the background of Benthamite theories on legislation and codification. Macaulay's

<sup>1</sup> This Committee issued the famous *Fifth Report* in July, 1812.

<sup>2</sup> Document No. 41.

<sup>3</sup> Document No. 42.

<sup>4</sup> Document No. 43.



peroration about 'an Empire exempt from all natural causes of decay' is almost an echo of self-complacent mid-Victorian Liberalism.

It is interesting to notice the great importance assigned by the framers of the Charter Act of 1833 to the question of the 'free ingress' of Europeans into India.<sup>1</sup> With this question were connected the centralisation of legislation, judicial changes and the removal of the disqualification of Indians for appointments in the Company's service. The Charter Act of 1813 had allowed Europeans to come to India under a strict system of licences. That restriction was now removed, but adequate precautions were taken to minimise the evils likely to arise from the 'free ingress' of Europeans of all classes into India.

The Charter Act of 1833 allowed the Company to hold the territorial possessions in India for twenty years 'in trust for His Majesty, his heirs and successors.' Twenty years later another Charter Act<sup>2</sup> continued the same arrangement without fixing any definite term: the Company was to govern India until Parliament should otherwise direct. The creation of a Legislative Council was the most interesting provision of this Act. Lord Dalhousie and Sir Charles Wood held different views about the functions and position of this Council.<sup>3</sup> It is interesting to speculate whether political progress in India would have been hastened if Sir Charles Wood had decided to recognise the Legislative Council as an 'Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth.'

An Act of 1854<sup>4</sup> empowered the Governor-General in Council, with the sanction of the Court of Directors and the Board of Control, to take any part of British territory under his immediate authority and management and to provide for its administration. This provision resulted in the establishment of Chief Commissionerships for several provinces like Assam, the Central Provinces and Burma. But the title of Chief Commissioner was not directly recognised by Act of Parliament till 1870.

### *Transfer of India to the Crown*

The transfer of India from the Company to the Crown was the logical result of the declaration of the sovereignty of the Crown

<sup>1</sup> Document No. 43.

<sup>2</sup> Document Nos. 47, 48.

<sup>3</sup> Document Nos. 51, 52.

<sup>4</sup> 17 & 18 Vict. c. 77.

in the Charter Acts of 1813, 1833 and 1853. The occasion of the transfer was provided by the Mutiny. In February, 1858, Lord Palmerston, who was then Prime Minister, introduced a Bill for transferring the government of India to the Crown.<sup>1</sup> The affairs of India were to be managed in England by a President with the assistance of a Council of eight members nominated by the Crown. The views of the Company were embodied in a petition<sup>2</sup> drafted by John Stuart Mill. The second reading of Palmerston's Bill was carried by a large majority, but soon afterwards he had to resign on another issue. During the administration of his successor, Lord Derby,<sup>3</sup> Lord Stanley, President of the Board of Control, introduced a Bill<sup>4</sup> which became law as the Government of India Act, 1858.

### *Civil Service*

Elizabeth's Charter empowered the Company to 'make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them . . . shall seem necessary and convenient for the good government . . . of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages.' The Charter of 1698 granted similar powers, and added the power of inflicting reasonable punishment by imprisonment, fines, or the like for breaches of the Company's enactments.

When the Company became a territorial Power, two problems arose : Should patronage belong to the Company or to the Crown ? How could clerks serving a commercial corporation be taught to govern an expanding Empire ?

Pitt's India Act maintained the Company's right of patronage, and this arrangement continued undisturbed till 1853. By the Charter Act of 1853<sup>5</sup> the right of patronage was taken away from the Court of Directors, and it was provided that appointments would be made in accordance with regulations framed by the Board of Control. In 1854 regulations were prepared by a committee under the presidency of Lord Macaulay. These regulations

<sup>1</sup> Document No. 53.

<sup>2</sup> Document No. 57.

<sup>3</sup> Document No. 55.

<sup>4</sup> Document No. 54.

<sup>5</sup> Document No. 47.

threw the *Convenanted Civil Service* open to general competition. By an Act of 1855 the *Haileybury College*, where the Company's civil servants were trained, was to be closed on January 31, 1858.

The problem of transforming 'factors' into responsible administrative and judicial officers was far more difficult. Clive was fully conscious of the temptations open to the Company's servants,<sup>1</sup> but his reforms were not really successful. Warren Hastings was recklessly generous in his disposal of patronage; no doubt his purpose was to retain control over the Company through favours done to proprietors' nominees. He enormously increased the cost of the civil establishment by creating highly paid posts.<sup>2</sup> Such a system was not likely to minimise corruption and increase efficiency.

The reforms of Lord Cornwallis were sincerely meant and really effective. He steadily refused to make improper appointments even to gratify his masters.<sup>3</sup> He eliminated unnecessary staff, provided for the payment of proper salaries, and curtailed unauthorised profits. Still his system had two serious defects. In the first place, his distrust for Indians not only increased the cost of administration by the wholesale Europeanisation of the service; it also degraded Indian character.<sup>4</sup> Secondly, he failed to understand that mere removal of corruption could not increase the efficiency of the civil service. The equipment of the civil servants left much to be desired. It is probable that Lord Cornwallis was vaguely conscious of this difficulty. The necessity of training the Company's servants in Indian languages was recognised in 1790, and it was notified to the writers that "the Governor-General will not be inattentive to the progress which they make in acquiring the country languages".

Although Lord Wellesley is remembered chiefly as one of the most successful of the 'Senatorial Proconsuls' whom Britain sent to govern her Indian territories, yet it is being gradually recognised that his regime constitutes a landmark in the history of the development of the British Civil Service in this country.<sup>5</sup> In this connection it is necessary to remember that the establishment of the *Fort William College* was by no means Lord Wellesley's sole

<sup>1</sup> Document No. 2.

<sup>2</sup> Keith, *A Constitutional History of India*, pp. 91-92.

<sup>3</sup> Document No. 28.

<sup>4</sup> Document No. 37.

<sup>5</sup> Document Nos. 34, 35.

contribution to the growth of a better and stronger administrative system. His Notification dated December 21, 1798, by which certain offices were closed to those servants of the Company who failed to pass an examination in the laws and regulations and in the languages, was the logical culmination of the step taken by Lord Cornwallis. The Fort William College provided the necessary apparatus for giving practical effect to the scheme of examination. It is as much possible to exaggerate the importance of the College as to belittle it. After all, even the most satisfactory arrangement about linguistic and legal training cannot, by itself, create an efficient and benevolent Civil Service capable of governing a rapidly expanding Empire in a strange land. A Civil Service can hardly be great unless it is convinced that it has a great cause to serve, a great mission to uphold. That ennobling feeling of doing something great the Company's servants derived from Lord Wellesley's robust imperialism.

In a Minute<sup>1</sup> dated July 10, 1800, Lord Wellesley declared, "The stability of that Empire . . . must be secured by the durable principles of internal order ; by a pure, upright, and uniform administration of justice ; by a prudent and temperate system of revenue. . . ." There is hardly anything new in this statesman-like declaration. The necessity of administrative consolidation had been felt by Warren Hastings and Lord Cornwallis, and Lord Wellesley did not add anything new to the structure built up by them. But the civil servants breathed a new atmosphere as soon as the second 'Senatorial Proconsul' landed in India, and the new order proved more and more attractive to them as time went on. In the first place, the disturbing effects of that well-known declaration in Pitt's India Act—that "to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and policy of this nation,"—evaporated in the whirlwind of aggression set in motion by the new Governor-General. A Civil Service not yet cut off from its commercial associations, and constantly reminded by the authorities that it was governing a territory which had been acquired by 'measures repugnant to the . . . honour' of England, would hardly be expected to be inspired with any lofty ideal of efficiency and benevolence. But Lord Wellesley silently, almost contemptuously, set aside the declaration of 1784 and launched upon a career of

<sup>1</sup> Document No. 35.

deliberate aggression. Lest any one should think that the policy of annexation and suzerainty was nothing more than a temporary phenomenon, he observed in a Minute dated July 10, 1800, "Duty, policy and honour require, that it should not be administered as a temporary and precarious acquisition. . . . It must be considered as a sacred trust, and a permanent possession."<sup>1</sup>

In the second place, Lord Wellesley allowed the Civil Service time to settle down. For twenty years (1772—1793) Warren Hastings and Lord Cornwallis had introduced changes after changes. It was, doubtless, a necessary process; the pioneers were still groping in the dark and the new system naturally took time to crystalize. But, viewed from the standpoint of the Civil Service, so many changes coming in rapid succession made its position uncomfortable and uncertain. New posts were created and abolished in the course of a few years; changes in Regulations were so frequent and bewildering that it was hardly possible to understand them. Administrative experiments are generally regarded by civil servants as unnecessary disturbances, especially if they come with unexpected rapidity. Fortunately, a period of comparative quiet began after the departure of Lord Cornwallis, and Lord Wellesley did nothing to disturb Sir John Shore's policy of non-intervention in the sphere of internal administration. The Civil Service found time to adjust itself to the Hastings-Cornwallis system. Thus Sir John Shore and Lord Wellesley may be said to have contributed, although indirectly, towards the consolidation of that system.

The policy of selecting the Governor-General from the ranks of English statesmen, begun with the appointment of Lord Cornwallis and confirmed by that of Lord Wellesley, opened to the Civil Service a new sphere of activity and usefulness, although it removed the highest post in British India from the scope of its ambition. A Governor-General like Warren Hastings or Sir John Shore, who had long and varied experience of administration in British India, possessed intimate knowledge of all problems and was never dependent on what we now call "expert advice." Under such a Governor-General the ablest of the civil servants can hardly hope to influence policy; he is expected merely to give effect to the directions emanating from the centre. Under such a system, one able and fortunate civil servant may rise to the

<sup>1</sup> Document No. 35. See also Document No. 37.

highest post and influence history ; but for the Civil Service as a whole it leaves nothing more important than routine work. But under a Governor-General like Lord Cornwallis or Lord Wellesley, who is ignorant of local conditions and, therefore, necessarily dependent on 'expert advice', the Civil Service may exercise enormous influence on the shaping of policy. In recent times the Indian Civil Service has undoubtedly played this part. Probably this tradition took a somewhat definite shape in the days of Lord Wellesley.

Lord Wellesley's aggressive policy opened to the Civil Service a new avenue of employment and distinction. "Closer relations with the 'country powers' called into existence a new class of diplomatists, destined to be famous under the style of Residents ; while frequent hostilities taught them their business in the most practical fashion".<sup>1</sup> The diplomatic training of the Company's servants really began under Lord Cornwallis, but Lord Wellesley extended its scope and importance ; a temporary expedient became an integral part of the administrative machinery. The origin of the so-called 'Political Department' of the Government of India is to be traced to the policy of Subsidiary Alliance. In this connection it is also necessary to remember that Lord Wellesley sent diplomatic Missions to countries outside India<sup>2</sup> and trained some servants of the Company in international diplomacy. The services of men trained by him were utilised by Lord Minto. Indeed, early training in the diplomatic sphere was best calculated to develop personality as well as administrative capacity. Unhindered by the telegraph, or even by regular posts, the young diplomatists were compelled to rely on their own resources, and often to decide without instructions upon measures of supreme importance. The sense of responsibility, thus early developed, served them in good stead when emergencies arrived."<sup>3</sup>

Lord Wellesley was certainly an adept in the art of selecting promising youngmen for responsible posts. Munro, Malcolm,

<sup>1</sup> J. S. Cotton, *Mountstuart Elphinstone*, p. 11.

<sup>2</sup> Malcolm went to Persia in 1799. Lieutenant Hill, Colonel Syme and Lieutenant Canning went to Burma.

<sup>3</sup> J. S. Cotton, *Mountstuart Elphinstone*, p. 12. Malcolm remarks about Lord Wellesley, "... those he employed in the execution of his measures, . . . he always relieved from every species of vexatious counteraction and delay that could arise from the untimely intrusion of official forms, or the unreasonable pretensions of inferior authorities." (*Political History of India*, Vol. I, p. 331).

Metcafe, Elphinstone—great names in British Indian history—practically began their careers under him, and from him they derived the inspiration which shaped them in their impressionable years. Malcolm says, "His great mind pervaded the whole : and a portion of his spirit was infused into every agent whom he employed."<sup>1</sup> Through his agents his spirit descended to the Company's servants who came to India long after his departure. "From Malcolm's example", we are told, "his young assistant Outram learned how to pacify Central India by training the savage tribe of Bhils ."<sup>2</sup> If Lord Hastings completed the task of Empire-building left unfinished by Lord Wellesley, he found in the civil and military officers trained under the latter able instruments and sagacious advisers.

By the time of Lord William Bentinck the Company's Civil Service had come to be recognised as an 'exclusive order';<sup>3</sup> the bureaucracy had already developed its peculiar characteristics.

The annexation of new territories and the growing complexity of administration made it necessary to modify the Cornwallis system and to admit Indians to subordinate offices. Probably the statesmanlike views of far sighted Anglo-Indians like Sir Thomas Munro<sup>4</sup> and the growing tide of Whiggism in England also contributed to this change. The Charter Act of 1833<sup>5</sup> removed the colour bar regarding appointments, but the Despatch of the Court of Directors<sup>6</sup> pointed out that it was not intended to 'break down or derange the scheme of our Government through the instrumentality of our regular servants.' Macaulay's glowing tribute to 'that wise, that benevolent, that noble clause,'<sup>7</sup> meant no substantial concession to the Indians.

### *The Company and the Indian States*

In all discussions about the relations of the Indian Princes with the Paramount Power we come across the elusive phrase, "treaty rights". It is well to remember that, apart from 'engage-

<sup>1</sup> *Political History of India*, Vol. I, p. 331.

<sup>2</sup> J. S. Cotton, *Mountstuart Elphinstone*, p. 13.

<sup>3</sup> Document No. 40.

<sup>4</sup> Document No. 37.

<sup>5</sup> Document No. 41.

<sup>6</sup> Document No. 43.

<sup>7</sup> Document No. 42.

ments' and 'sanads,' there are only forty States with *treaties*<sup>1</sup>. All these treaties, except one, were concluded during the period 1794-1846. A proper understanding of the treaties requires a thorough acquaintance with the political history of the period in which they were concluded. The treaties printed in the present work are illustrative of the demands made by the Company upon its Indian allies. For want of space we have excluded all treaties with States which do not exist at the present time; but the historical evolution of Paramountcy cannot be properly understood without a thorough study of the treaties, for instance, with the Nawabs of Oudh and the Carnatic.

Sir William Lee-Warner observes, "The key note of the foreign policy of the Company towards the princes of the country from 1757 to the close of Lord Minto's rule as Governor-General in 1813, was one of non-intervention or limited liability.

Beyond the ring-fence of the Company's dominion they avoided intercourse with the chiefs. When the events of these fifty-six busy years are called to mind, the palpable anxiety of the Company to avoid both annexation and alliances stands out in the clearest relief."<sup>2</sup> It is difficult to accept this view in its entirety. It is true that Oudh was not annexed in 1764, and Shuja-ud-daula was allowed to absorb Rohilkhand with the Company's assistance. But the process of bringing Oudh under the control of the Company began after the battle of Buxar and reached its culmination during the administrations of Sir John Shore, whose adherence to the policy of non-intervention did not prevent him from regulating succession, and of Lord Wellesley, who seized large and fertile tracts described by Vincent Smith as 'some of the most favoured regions in India.' The First Maratha War resulted in the annexation of Salsettee; it is doubtful whether the Company was

<sup>1</sup> Rampur (1794), Mysore (1799, 1881, 1913), Hyderabad (1800, 1853), Alwar (1803), Gwalior (1804, 1844), Baroda (1805), Bharatpur (1805), Travancore (1805), Dholpur (1806), Cochin (1809), Kolhapur (1812), Rewa (1812), Orchha (1812), Sikim (1814), Kotah (1817), Karauli (1817), Tonk (1817), Samthar (1817), Bhopal (1818), Bikaner (1818), Datia (1818), Dewas Senior and Junior (1818), Indore (1818), Jaipur (1818), Jaisalmer (1818), Jodhpur (1818), Kishengarh (1818), Partabgarh (1818), Udaipur (1818), Bundi (1818), Cutch (1819), Sawantwari (1819), Dhar (1819), Sirohi (1823), Bahawalpur (1838), Khairpur (1838), Jhalawar (1838), Kashmir (1838), Kalat (1876).

See Lee-Warner, *The Native States of India*, pp. 53-57.

<sup>2</sup> *The Native States of India*, pp. 58-59.



then strong enough to absorb more. Nor is Sir William Lee-Warner correct in saying that 'the allies of the British derived the main advantage' from the four Mysore Wars. By the Third Mysore War the Company obtained Malabar, Coorg, Dindigul and Baramahal. By the Fourth Mysore War the Company annexed Kanara and left to the dependent Hindu Raja<sup>1</sup> territory which was 'completely surrounded by the British dominions and cut off from access to the sea'. The terms of peace granted by Lord Wellesley to Sindhia<sup>2</sup> and Bhonsla are described as 'conspicuous for their moderation'; but the Company acquired Orissa as well as Delhi and Agra. Lord Wellesley also annexed the Carnatic,<sup>3</sup> Tanjore and Surat. The Cis-Sutlej States were brought under British protection by Lord Minto in 1809. In the same year a treaty was concluded with Sind.

It was during the administration of Lord Wellesley that the Company 'advanced from the position of *primus inter pares* to an assertion of superiority'. He gave a definite shape to the system of Subsidiary Alliance, which had been in practical operation in the Carnatic and Oudh for many years. The evils inherent in this system were thus extended to new States, and in the days of Lord Hastings and his successors they became fairly universal. As Sidney Owen observes, "the native Prince being guaranteed in the possession of his dominions, but deprived of so many of the essential attributes of sovereignty, sinks in his own esteem, and loses that stimulus to good government, which is supplied by the fear of rebellion and deposition. He becomes a *roi faineant*, a sensualist, an extortionate miser, or a careless and lax ruler . . . The higher classes, coerced by external assendancy, in turn lose their self-respect, and degenerate like their master; the people groan under a complicated oppression which is irremediable. Thus, in spite of the Resident's counsels and attempts to secure good government, the back of the State, so to speak, is broken; the spirit of indigenous political life has departed: the native community tends to dissolution; and annexation is eventually the inevitable remedy for its helplessness and chronic disorders."

According to Sir William Lee-Warner, the policy of subordinate isolation<sup>4</sup> was pursued during the period 1813—1857. He

<sup>1</sup> Document No. 59.

<sup>2</sup> Document No. 61.

<sup>3</sup> Document No. 63.

<sup>4</sup> *The Native States of India*, Chapter IV.

remarks that the treaty with Udaipur<sup>1</sup> is 'a document typical of Lord Hastings' treaties' with *existing* States. The treaty with Satara (1819)<sup>2</sup>, on the other hand, illustrates his policy with regard to *newly created* States. In the latter case the Prince was required to hold the territory, granted to him 'in subordinate co-operation with the British Government, and to be guided in all matters by the advice of the British agent'. This distinction between existing States and newly created States lay at the root of the Doctrine of Lapse.

It would not be quite correct, however, to think that the Company's right of intervention in the affairs of States connected with it by Subsidiary Alliances was based only on the specific words of treaties. As a general rule the Supreme Government wanted to avoid intervention;<sup>3</sup> but there were various circumstances under which intervention could not be avoided. Intervention in its extreme form—annexation—was in some cases, as in Coorg and Oudh, the only remedy for maladministration. Sometimes intervention in the form of interference in internal administration was the result of local British policy, *i.e.*, the policy pursued by a Resident who might be over-zealous or sincerely anxious to secure benevolent administration.<sup>4</sup> In such cases the personal factor was naturally predominant. The Report of the Butler Committee stated the position in the following words: "The relationship of the Paramount Power with the States is not a merely contractual relationship, resting on treaties made more than a century ago. It is a living, growing relationship shaped by circumstances and policy, resting, as Professor Westlake has said, on a mixture of history, theory and modern fact." The origin of this 'mixture of history, theory and modern fact' must be traced to the period covered by this volume.

Sir William Lee-Warner has tried to justify the morality and legality of Lord Dalhousie's annexations.<sup>5</sup> The cases of Coorg and Oudh proved that neither treaty nor advice could cure oppression. "They were the object-lessons which induced him to welcome lapses as cutting the knot which political practice had failed to

<sup>1</sup> Document No. 67.

<sup>2</sup> Document No. 73.

<sup>3</sup> Lee-Warner, *The Native States of India*, pp. 125-126.

<sup>4</sup> Document No. 64.

<sup>5</sup> *The Native States of India*, pp. 152-156. See also Lee-Warner's *Life of Dalhousie*.

unite." The legal validity of the Doctrine of Lapse was based on the fundamental distinction between private property and a chiefship which is recognised by Hindu law. There is no doubt, however, that the *political* inexpediency of Lord Dalhousie's policy was demonstrated by the Mutiny. So the Queen's Proclamation<sup>1</sup> assured the Princes that their 'Rights, Dignity and Honour' would be scrupulously respected, and the 'Adoption *Sanads*'<sup>2</sup> granted by Lord Canning brought the era of annexations to an end.

<sup>1</sup> Document No. 58.

<sup>2</sup> *Indian Constitutional Documents*, Vol. II, Appendix A.



# INDIAN CONSTITUTIONAL DOCUMENTS

## 1. GROWTH OF THE EAST INDIA COMPANY'S TERRITORIAL POWER IN BENGAL.

### I. Clive to Calcutta Council, June 30, 1757.

In the afternoon I waited on Jafar Ali Khan, being escorted to him by his son. I only attempted to convince them, that we should not anyways interfere in the affairs of the Government, but leave that wholly to the Nawab; that as long as his affairs required it, we were ready to keep the field, after which we should return to Calcutta and attend solely to commerce, which was our proper sphere, and our whole aim in these parts.

Company  
wants trade  
only

### II. Treaty with Mir Jafar,<sup>1</sup> 1757: Article 9.

All the land lying to the south of Calcutta, as far as Culpee, shall be under the zemindary of the English Company; and all the officers of those parts shall be under their jurisdiction. The revenues to be paid by them (the Company) in the same manner with other zemindars.

Twenty-  
four  
Parganas

### III. Treaty with Mir Kasim, 1760 : Article 5.

For all charges of the Company and of the said Army, and provisions for the field, etc., the lands of Burdwan, Midnapore, and Chittagong shall be assigned, and sunnuds for that purpose shall be written and granted. The Company is to stand to all losses and receive all the profits of these three countries, and we will demand no more than the three assignments aforesaid.

Burdwan,  
Midnapore,  
Chittagong

### IV. Treaty with Mir Jafar, 1763 : Article 2.

I do grant and confirm to the Company for defraying the expenses of their troops, the chucklas of

<sup>1</sup> Describing Mir Jafar's position after Plassey Vansittart wrote, "We had now a Nabob of our own making, and absolutely dependent upon us for his establishment and future security."

Burdwan, Midnapore, and Chittagong, which were before ceded for the same purpose.

**V. Treaty with Najm-ud-daula, February, 1765:  
Articles 2-4.**

2. Considering the weighty charge of government, and how essential it is for myself, for the welfare of the country, and for the Company's business, that I should have a person who has had experience therein to advise and assist me, I do agree to have one fixed with me, with the advice of the Governor and Council, in the station of Naib Soubah, who shall accordingly have immediately under me the chief management of all affairs: And as Mahomed Reza Khan, the Naib of Dacca, has in every respect my approbation and that of the Governor and Council, I do further agree that this trust shall be conferred on him, and I will not dispose of him without the acquiescence of those gentlemen.....

3. The business of the collection of the revenues shall, under the Naib Soubah, be divided into two or more branches as may appear proper, and as I have the fullest dependence and confidence on the attachment of the English and their regard to my interest and dignity, and am desirous of giving them every testimony hereof, I do further consent that the appointment and dismission of the Muttaseddees of those branches, and the allotment of their several districts, shall be with the approbation of the Governor and Council; and...it is my further will that the Governor and Council shall be at liberty to object and point out to me when improper people are entrusted, or where my officers and subjects are oppressed, and I will pay a proper regard to such representations.....

4. I do confirm to the Company, as a fixed resource, for defraying the ordinary expenses of their troops, the chucklas of Burdwan, Midnapore, and Chittagong, in as full a manner as heretofore ceded by my father.....

**VI. Treaty with Saif-ud-daula, 1766 : Article 2.**

The king has been graciously pleased to grant Nawab unto the English East India Company the Dewany- reduced ship of Bengal, Behar and Orissa, as a free gift for to the ever;<sup>1</sup> and I..do.. for the better conducting the position of the affairs of the Soubahdarry, and promoting my honour a puppet and interest, and that of the Company in the best manner, agree that the protecting the Provinces of Bengal, Behar and Orissa, and the force sufficient for that purpose, be entirely left to their discretion and good management.....<sup>2</sup>

**2. CLIVE'S VIEWS ON BRITISH POLICY, 1765.**

Nothing but extreme necessity ought to induce us to extend our ideas of territorial acquisitions beyond the amount of those ceded by Kasim Ali Khan<sup>3</sup>

Territorial  
expansion  
not wanted

But by this system of moderation it is not intended that the Nawab should be left entirely independent of us. The moment he fancies himself in this situation he will look upon us as enemies who have taken too much from him, and whom it will be necessary, either to reduce to our ancient state of mere merchants, or to extirpate. This, therefore, was the error of Mr. Vansittart's conduct ; he advised the Nawab to regulate his treasury, save money, to form and discipline an excellent army, and to pay them well and regularly, contrary to the practice of all the princes of India. By following this advice punctually, Kasim Ali, in two years, thought himself in a condition to bid us defiance, and was near being so.

Why Nawab  
should be  
kept under  
British  
control

Example of  
Mir Qasim

It ought, therefore, to be our plan to convince the Nawab that our troops are his best, his only support against foreign enemies ; and that our friendship will be his best support against the plots and revolutions of his own officers. Necessitated, by the extent of his

How Nawab  
may be  
kept under-  
control

<sup>1</sup> See Document No. 3.

<sup>2</sup> The second article of the Company's treaty with Mubarak-ud-daula is exactly similar.

<sup>3</sup> The *Zamindaris* of Burdwan, Midnapore and Chittagong.

dominions, to repose large governments and great trusts in particular men, jealousies will be perpetually subsisting. On the nice and disinterested management of these will depend our importance. The principal officers must be convinced that we will protect them from any capricious violences of their sovereign ; and, on the other hand, the Nawab must be convinced, that we will give them up to his just resentment the moment their ambition alone leads them to strike at him.

Temptations  
open to  
Company's  
servants
 To carry this balance with an even hand, the strictest integrity will be necessary in every one who shall have a vote in your councils abroad. I found myself every day assaulted by large offers of presents, from the principal men of the province, not to support the Nawab in resolutions contrary to their interests ; and from the Nawab, to sacrifice them to his capricious resentments.

But even this conduct will not be sufficient to keep us from giving umbrage. During Mr. Vansittart's government, all your servants thought themselves entitled to take large shares in the monopolies of salt, betel, and tobacco, the three articles, next to grain, of greatest consumption in the empire. The odium of seeing such monopolies in the hands of foreigners need not be insisted on ; but this is not the only inconvenience ; it is productive of another, equally, if not more prejudicial to the Company's interests ; it enables many of your servants to obtain, very suddenly, fortunes greater than those which in former times were thought a sufficient reward for a long continuance in your service. Hence these gentlemen, thus suddenly enriched, think of nothing but of returning to enjoy their fortunes in England, and leave your affairs in the hands of young men, whose sanguine expectations are inflamed by the examples of those who have just left them.



### 3. GRANT OF DEWANI TO THE EAST INDIA COMPANY BY EMPEROR SHAH ALAM,<sup>1</sup> 1765.

(August 12, 1765).

At this happy time our royal Firmaund, indispensably requiring obedience, is issued: that whereas in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the Dewanny<sup>2</sup> of the Provinces of Bengal, Behar, and Orissa, from the beginning of the Fussul Rubby of the Bengal year 1172, as a free gift and ultumgau,<sup>3</sup> without the association of any other person, and with an exemption from the payment of the customs of the Dewanny, which used to be paid to the Court. It is requisite that the said Company engage to be

Nature  
of the  
grant

<sup>1</sup> In a letter to William Pitt the Elder, dated January 7, 1759, Clive suggested the desirability of acquiring the sovereignty of Bengal, Bihar and Orissa for the Company, and added, "there is little room to doubt our easily obtaining the Moghul's sunnud (or grant) in confirmation thereof, provided we agreed to pay him the stipulated allotment out of the revenues, viz., fifty lacs annually." He continued, "application has been made to me from the Court of Delhi, to take charge of collecting this payment, the person entrusted with which is styled the King's Dewan, and is the next person both in dignity and power to the Subah. But this high office I have been obliged to decline for the present, as I am unwilling to occasion any jealousy on the part of the Subah; especially as I see no likelihood of the Company's providing us with a sufficient force to support properly so considerable an employ, and which would open a way for securing the Subahship to ourselves." For the full text of the letter see Keith, *Speeches and Documents on Indian Policy*, Vol. I, pp. 13-18.

Why Clive  
refused  
Dewani

<sup>2</sup> For the meaning of Dewani see Moreland, *The Agrarian System of Modern India*, pp. XIV-XV, and D. N. Banerjee, *Early Administrative System of the East India Company in Bengal*, Vol. I, pp. 1-6, 50-66.

<sup>3</sup> *Altamgha or Grant-under-seal*. Such grant constituted 'the nearest approach to land-ownership, in the modern sense, which appears during the Mogul period.' By 'contrast with the other tenures of the period, it may be regarded as permanent.' See Moreland, *The Agrarian System of Modern India*, pp. 127-128.

Liabilities  
of the  
Company

security for the sum of twenty-six lakhs of rupees a year, for our royal revenue, which sum has been appointed from the Nabob Nudjum-ul-Dowla Behauder, and regularly remit the same to the royal Circar; and in this case, as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal, etc., we have granted to them whatsoever may remain out of the revenues of the said Provinces, after remitting the sum of twenty-six lakhs of rupees to the royal Circar, and providing for the expenses of the Nizamut. It is requisite that our royal descendants, the viziers, the bestowers of dignity, the Omrahs, high in rank, the great officers, the Muttaseddees of the Dewanny, the managers of the business of the Sultanut, the Jaghirdars and Croories, as well as the future as the present, using their constant endeavours for the establishment of this our royal command, leave the said office in possession of the said Company, from generation to generation, for ever and ever. Looking upon them to be assured from dismissal or removal, they must, on no account whatsoever, give them any interruption, and they must regard them as excused and exempted from the payment of all the customs of the Dewanny and royal demands. Knowing our orders on the subject to be most strict and positive, let them not deviate therefrom.

#### 4. CLIVE'S VIEWS ON THE POSITION OF THE NAWAB OF BENGAL.

##### I. Letter to the Chairman of the Court of Directors, April 17, 1765.

Company  
must make  
itself  
*de facto*  
Nawab

We have at last arrived at that Critical Period, which I have long foreseen ; I mean that Period which renders it necessary for us to determine, whether we can or shall take the whole to ourselves. it is scarcely an Hyperbole to say that the whole Mogul Empire is in our hands. The Inhabitants of the Country have no Attachment to any Obligation ; their Forces are neither disciplined, commanded, nor paid, as ours are. Can it then be doubted that a

large Army of Europeans will effectually preserve us Sovereigns, not only holding in Awe the Attempts of any Country Prince, but by rendering us so truly formidable, that no French, Dutch, or other Enemy will presume to molest us. The very Nabobs whom we might support, would be either covetous of our Possessions, or jealous of our Power. Ambition, Fear, Avarice, would be daily watching to destroy us; a Victory would be but a temporary Relief to us, for the dethroning of the first Nabob would be followed by setting up another, who from the same Principles, would, when his Treasure admitted of his keeping up an Army, pursue the very Path of his Predecessor. We must indeed become Nabobs ourselves in Fact, if not in Name, perhaps totally so without disguise.

## II. 'System of Politics': Select Committee, January 16, 1767.

The first point in Politics which I offer to your consideration, is the Form of Government. We are sensible, that since the acquisition of the Dewanny, the Power formerly belonging to the Soubah of these Provinces is totally in Fact vested in the East India Company. Nothing remains to him, but the Name and Shadow of Authority. This Name however, this Shadow, it is indispensably necessary we should seem to venerate. Every Mark of Distinction and Respect, must be shown him, and He himself encouraged to shew his Resentment upon the least want of Respect from other Nations. Under the sanction of a Soubah every Encroachment that may be attempted by Foreign Powers, can effectually be crushed, without any apparent Interposition of our own Authority, and all real grievances, complained of by them, can, through the same charnel, be examined into and redressed. . . . To appoint the Company's servants to the offices of Collectors, or indeed to do any act, by an Exertion of the English Power, which can equally be done by the Nabob at our Instance, would be throwing off the mask,—would be declaring the Company Soubah of the Provinces. Foreign Nations would immediately take umbrage, and complaints preferred to the British

Nawab—  
a 'shadow'

Why the  
'shadow'  
must be  
maintained

Dread of  
other  
European  
Powers

Court might be attended with very embarrassing consequences. Nor can it be supposed that either the French, Dutch, or Danes would readily acknowledge the Company's Soubahship, and pay into the Hands of their Servants the Duties upon Trade, or the Quit Rents of those Districts which they may have long been possessed of by virtue of the Royal<sup>1</sup> Firmaund,<sup>2</sup> or Grants from former Nabobs. In short, the present Form of Government, will not, in my opinion, admit of variation: The Distinction between the Company and the Nabob must be carefully maintained, and every Measure wherein the Country Government shall even seem to be concerned, must be carried on in the Name of the Nabob, and by his Authority

### 5. RICHARD BECHER ON THE BAD EFFECTS OF DOUBLE GOVERNMENT, 1769.

(May 24, 1769).

Bengal  
verging  
towards  
ruin

It must give pain to an Englishman to have Reason to think that since the accession of the Company to the *Diwani* the condition of the people of this Country has been worse than it was before; and yet I am afraid the Fact is undoubted; this fine Country, which flourished under the most despotic and arbitrary Government, is verging towards its Ruin

Increased  
revenue  
demand.

In Aliverdi Khan's Time the amount of the Revenue paid into the Treasury was much less than what comes in at present. When the English received the grant of the *Dewani* their first consideration seems to have been the raising of as large sums from the Country as could be collected, to answer the pressing demands from home and to defray the large Expenses here. The *Zamindars* not being willing or able to pay the sums required, *Aumils* have been sent into most of the Districts. These *Aumils* on their appointment agree to pay a fixed sum for the Districts they are to go to, and the man that has offered most has generally been preferred. What a destructive system is this for the poor Inhabitants!

<sup>1</sup> Imperial.

<sup>2</sup> *Farman*.

The *Aumils* have no connection or natural Interest in the Welfare of the Country where they make the collection, nor have they any certainty of holding their places beyond the Year : the best recommendation they can have is to pay up their *Kistbundi*<sup>1</sup> punctually, to which purpose they fail not to rack the Country whenever they find they cannot otherwise pay their *Kists* and secure a handsome sum themselves . . . . The *Aumils* appoint those that act under them ; so that during the Time of the Year's Collection their power is absolute . . . . On this destructive plan and with a continual Demand for more Revenue have the collections been made ever since the English have been in possession of the *Diwani* Oppression of *Aumils*

## 6. BOLTS ON THE BAD EFFECTS OF DOUBLE GOVERNMENT, 1772.

The soil, revenues, justice, and interior government of these countries are entirely in the hands of the English East India Company ; the prince, whom they call the Grand Mogul, being the mere instrument of their power, set up by them, and supported by a pension for the serving of their own private purposes ; the pretended Nawabs of Bengal and Behar being the actual stipendiary servants of the said Company, and the *Diwani*, under which title they pretend to hold those territorial possessions, being a mere fiction, invented for the private purposes of the Company and their servants *De facto* Sovereignty of the Company

The revenues of the provinces of Bengal, Behar, and part of Orissa, which the Company collect, were in the year 1765 estimated to amount to upwards of three millions six hundred thousand pounds sterling per annum ; and by proper management they might with ease have been improved by this time to six millions ; but at present, under the ridiculous plan of a double government, they are every day exhausted by plunder and oppression ; and while this nation is gazing after the fruit, the Company and their substitutes are suffered to be rooting up the tree. Prosperity of Bengal  
'Ridiculous plan of a double government'

<sup>1</sup> Instalment payable under contract.

**Anomaly of combining political and commercial functions** The different interests of the Company, as sovereigns of Bengal and at the same time as monopolizers of all the trade and commerce of those countries, operate in direct opposition, and are mutually destructive of each other; so that without a new system, the progress must be from bad to worse. The Company, if left to pursue its present system, will ruin itself; the possessions in Bengal will be beggared

## 7. THE COMPANY AS DEWAN,<sup>1</sup> 1772.

**Dismissal of Reza Khan**

**Company as Dewan**

**Instructions to Murshidabad Council**

**Murshidabad Council to discharge Reza Khan's duties pending final arrangement**

As Mahomed Reza Cawn is now deprived of his office of Naib Dewan the Honourable Court of Directors have resolved to stand forth themselves in the character of Dewan. The Board are of opinion that the Moorshedabad Council should be directed immediately to undertake the conduct of that office until proper plans can be formed for the management of so important a trust. It is therefore—

Agreed to send the following direction to that Board:—

To Samuel Middleton, Esq., Chief, etc., Council of Revenue at Moorshedabad. Gentlemen,

The Honourable Court of Directors having thought proper to divest Mahomed Reza Cawn of his station of Naib Dewan and having determined to stand forth publicly themselves in the character of Dewan, we direct that for the present you take charge of that office and perform the duties of it until we shall have settled and digested a proper plan for the

<sup>1</sup> Proceedings of the Secret Select Committee, April 28, 1772. Hastings wrote to Sykes on March 2, 1773, "by the translation of the *Khalsa* to Calcutta, by the exercise of the *Diwani* without an intermediate agent, by the present establishment and superintendency of the Nawab's household, and by the establishment of the new courts of justice, under the control of our own government, the authority of the Company is fixed in this country without any possibility of a competition and beyond the power of any but themselves to shake it. The Nawab is a mere name, and the seat of government most effectually and visibly transferred from Murshidabad to Calcutta. . . ."

conduct and management of so important a trust, and you will immediately make this alteration public at the city as well as in all the districts appertaining to the province of Bengal.

Fort William, We are, etc.,  
The 28th April, 1772. (Sd.) Members of Council.

\* \* \* \* \*

As the charge of neglect or embezzlement of revenues is equally applied by the Court of Directors to Setabroy, the Naib Dewan of the Behar province, as to Mahomed Reza Cawn, as they have directed a minute enquiry to be made into both, and as the leaving Setabroy in possession of his office after the measures which have been taken respecting Mahomed Reza Cawn, and the conclusions which he must necessarily form with regard to himself, may put in his power to elude any enquiry into his conduct either by private collusions with his agents or by flight :—

Position of  
Shitab Rai  
similar to  
that of  
Reza Khan

The Board are of opinion that it will be equally necessary to lay an immediate restraint upon his person and that of his Dewan also.

Arrest of -  
Shitab Rai

Agreed therefore that the President be requested to write to the Chief of Patna for the above purpose in like manner as he has written to the Chief of the Durbar.

Instructions  
to Chief  
of Patna

## 8. WARREN HASTINGS ON DEFECTS IN THE EAST INDIA COMPANY'S SYSTEM OF GOVERNMENT, 1773.

(Letter to the Court of Directors,  
November 11, 1773).

May I be permitted, in all deference and submission to your commands, to offer it as my opinion that whatever may have been the conduct of individuals, or even of the collective members of your former administrations, the blame is not so much imputable to them as to the want of a principle of government adequate to its substance, and a coercive power to enforce it. The extent of Bengal, and its

Bad adminis-  
tration due  
more to the  
system than  
to indivi-  
duals

possible resources, are equal to those of most states in Europe. Its difficulties are greater than those of any, because it wants both an established form and powers of government, deriving its actual support from the unremitted labour and personal execution of individuals in power instead of the vital influence which flows through the channels of a regular constitution, and imperceptibly animates every part of it. Our constitution is nowhere to be traced but in ancient charters which were framed for the jurisdiction of your trading settlements, the sales of your exports, and the provision of your annual investment. I need not observe how incompetent these must prove for the government of a great kingdom, and for the preservation of its riches from private violence and embezzlement.

\* \* \* \* \*

Lack of  
continuity  
and  
definition

I shall offer but two points to your notice. One is the rapid succession of your governors<sup>1</sup>; the other, the undefined powers of the respective members of your administration. Both are productive of the same ill effects, a want of vigour and consistency in public measures, and a general diffidence and the consequent spirit of intrigue in those whose interests or services are by any mode of relation connected with our government.

\* \* \* \* \*

Limitations  
on powers of  
Governor

The powers of the Governor, although supposed to be great, are in reality little more than those of any individual in his Council. Their compliance, his own abilities, or a superior share of attention, and the opinion that he possesses extraordinary powers, may give him the effect of them, and an ascendant over his associates in the administration; but a moment's contention is sufficient to discover the nakedness of his authority, and to level him with the rest....

To draw the line between him and the other members of his administration, and to define the

<sup>1</sup> The term of each Governor was then limited to three years.



powers which may be entrusted to his charge, would not be an easy task....I am convinced that the future prosperity, and even the being of the Company, and of the national interests in this great kingdom, depend upon it. The distant and slow interposition of the supreme power which is lodged in your hands cannot apply the remedies to the disorders which may arise in your state. A principle of vigour, activity, and decision must rest somewhere. In a body of men entrusted with it, its efficacy is lost by being too much divided. It is liable to still worse consequences, the less the number is of which the body consists, because the majority is easier formed. Fixed to a single point only it can command confidence and ensure consistency....

Necessity of defining and strengthening the position of the Governor

On the other hand there is a danger that such a power may be abused, unless powerful checks be provided to counteract the misapplication of it....I proceed to describe the points of distinction which appear to me necessary for ascertaining the respective provinces of the Council, the Select Committee, and the President.

Necessity of limiting Governor's powers

1. The Select Committee shall have the power of making peace and war, and of determining all measures respecting both, independent of the Council at large. But they shall enter into no treaty of alliance, whether offensive or defensive, for a longer duration than two years without a special authority from the Honourable the Court of Directors. Every such treaty shall be communicated to the Council at large as soon as it conveniently may be, that their opinion upon it may be transmitted with it to the Court of Directors.

Suggestions: (1) Powers of Select Committee

2. It shall nevertheless be allowable for the President to bring any matter before the Council at large, although included within the foregoing limitations, and the decision of the Council thereon shall be valid and binding on the Select Committee. But no other members of the Committee shall be allowed the same privilege.

(2) Special powers of Governor

3. The President shall have the privilege of acting by his own separate authority on such urgent and extraordinary cases as shall in his judgment require it, notwithstanding any decision of the Council, or of the Committee passed thereon. On every occasion the President shall record his resolution to act in the manner above specified, in virtue of the power thus vested in him, and shall expressly declare that he charges himself with the whole responsibility.

4. All civil appointments within the provinces shall be made by the Board at large, but the President shall be empowered of his own authority to prevent any particular appointment and to recall any person, not being a member of the Board, from his station, even without a reason assigned. All appointments beyond the provinces, and all military appointments which are not in the regular line of promotion, shall be made by the President alone.

\* \* \* \* \*

Necessity of  
lengthening  
Governor's  
tenure of  
office

....I offer it as my humble opinion that on whomsoever you shall think fit to bestow the place which I now hold in your service, it will be advisable to fix him in it for a long period of time.....

Longer term  
would check  
corruption

The first command of a state so extensive as that of Bengal is not without opportunities of private emoluments, and although the allowances which your bounty has liberally provided for your servants may be reasonably expected to fix the bounds of their desires, yet you will find it extremely difficult to restrain men from profiting by other means, who look upon their appointment as the measure of a day, and who, from the uncertainty of their condition, see no room for any acquisition but of wealth, since reputation and the consequence which follows the successful conduct of great affairs are only to be attained in a course of years....

....Every man whom your choice has honoured with so distinguished a trust seeks to merit approbation and acquire an eclat by innovations, for which the wild scene before him affords ample and justifi-

able occasion. But innovations of real use require a longer term length of time, and the unremitting application of their original principles to perfect them. Their immediate effects are often hurtful, and their intended benefits remote....But who that looks only for present applause or present credit would hazard both for remote advantages, of which another might arrogate the merit and assume the reward? Or who will labour with equal perseverance for the accomplishment of measures projected by others, as of those of which he was himself the contriver?

Longer term  
necessary  
for reform

## 9. THE EAST INDIA COMPANY ACT, 1773.<sup>1</sup> (13. Geo. 3, C. 63).

AN ACT FOR ESTABLISHING CERTAIN REGULATIONS FOR THE BETTER MANAGEMENT OF THE AFFAIRS OF THE EAST INDIA COMPANY, AS WELL IN INDIA AS IN EUROPE.

Whereas the several Powers and Authorities granted by charters to the United Company of Merchants of England trading to the East Indies have been found, by Experience, not to have sufficient Force and Efficacy to prevent various Abuses which have prevailed in the Government and Administration of the Affairs of the said United Company, as well at Home as in India, to the manifest Injury of the Public Credit, and of the commercial interests of the said Company; and it is therefore become highly expedient that certain further Regulations, better adapted to their present circumstances and condition, should be provided and established: And whereas the electing and choosing of Directors of the said United Company every year, in such manner as at present prescribed by charter, has not answered the good Purposes intended thereby, but, on the contrary, by limiting the Duration of their Office to so short a Time, evidently tends to weaken the Authority of the Court of Directors, and to produce Instability in the Councils and Measures of the said Company: May

Preamble

<sup>1</sup> This Act is generally known as the Regulating Act.

it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same, that . . . .

\* \* \* \* \*

7. And for the better management of the said United Company's Affairs in India, be it further enacted by the authority aforesaid, that for the government of the Presidency of Fort William in Bengal, there shall be appointed a Governor-General, and four Counsellors;

Governor-General and Council : powers and duties

and that the whole civil and military government of the said Presidency, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the said United Company, be, and are hereby vested in the said Governor-General and Council of the said Presidency of Fort William in Bengal, in like manner, to all intents and purposes whatsoever, as the same now are, or at any time heretofore might have been exercised by the President and Council or Select Committee in the said kingdoms.

Opinion of majority to prevail

8. And be it enacted by the Authority aforesaid, that in all cases whatsoever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said Governor-General and Council shall be bound and concluded by the opinion and decision of the major part of those present: and if it shall happen that, by the death or removal, or by the absence, of any of the Members of the said Council, such Governor-General and Council shall happen to be equally divided; then, and in every such case, the said Governor-General, or, in his absence, the eldest counsellor present, shall have a casting voice, and his opinion shall be decisive and conclusive.

Casting vote of Governor-General

9. And be it further enacted by the Authority Control of aforesaid, that the said Governor-General and Council, Governor-General in or the major part of them, shall have, and, they are Council on hereby authorised to have, power of superintending Madras and and controlling the government and management of Bombay the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it shall not be lawful for any President and Council of Madras, Bombay, or Bencoolen for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian Princes or Powers, without the consent and approbation of the said Governor-General and Council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the orders from the Governor-General and Council might arrive; and except in such cases where the said Presidents and Councils respectively shall have received special orders from the said United Company; and any President and Council of Madras, Bombay, or Bencoolen, who shall offend in any of the cases aforesaid, shall be liable to be suspended from his or their office by the order of the said Governor-General and Council; and every President and Council of Madras, Bombay, and Bencoolen for the time being, shall, and they are hereby respectively directed and required, to pay due obedience to such orders as they shall receive, touching the premises, from the said Governor-General and Council for the time being, and constantly and diligently to transmit to the said Governor-General and Council advice and intelligence of all transactions and matters whatsoever that shall come to their knowledge, relating to the Government, Revenues or Interest, of the said United Company ; and the said Governor-General and Council for the time being shall, and they are hereby directed and required to pay due obedience to all such orders as they shall receive from the Court of Directors of the said United Company, and to correspond,

from time to time, and constantly and diligently transmit to the said Court an exact particular of all advices or intelligence, and of all transactions and matters whatsoever, that shall come to their knowledge, relating to the government, commerce, revenues, or interest, of the said United Company;.....

Names of  
Governor-  
General and  
Counsellors

10. And that Warren Hastings, Esquire, shall be the first Governor-General; and that Lieutenant-General John Clavering,\*the Honorable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, shall be the four first Counsellors; and they, and each of them, shall hold and continue in his and their respective offices for and during the term of five years from the time of their arrival at Fort William in Bengal, and taking upon them the government of the said Presidency, and shall not be removeable in the meantime, except by His Majesty, his Heirs and Successors, upon representation made by the Court of Directors of the said United Company for the time being ; and from and after the expiration of the said term of five years, the power of nominating and removing the succeeding Governor-General and Council shall be vested in the Directors of the said United Company.

\* \* \* \* \*

George II's  
Charter of  
1753

13. And, whereas his late Majesty King George the Second did by his letters patent, bearing date at Westminster the eighth day of January, in the twenty-sixth year of his .eign, grant unto the said United Company of merchants of England trading to the East Indies his royal charter, thereby amongst other things, constituting and establishing Courts of civil, criminal and ecclesiastical jurisdiction, at the said United Company's respective settlements at Madras-patnam, Bombay on the Island of Bombay, and Fort William in Bengal; which said charter does not sufficiently provide for the due administration of justice in such manner as the state and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall continue in the possession of the

territorial acquisitions 'before mentioned, do and must require; be it therefore enacted by the Authority aforesaid, that it shall and may be lawful for His Majesty, by charter, or letters patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and three other Judges, being Barristers in England or Ireland, of not less than five years' standing, to be named from time to time by His Majesty, his Heirs and Successors; which said Supreme Court of Judicature shall have, and the same Court is hereby declared to have, full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries, as shall be approved of by the said Governor-General and Council; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of justice, and the due execution of all or any of the powers which, by the said charter, shall or may be granted and committed to the said Court; and also shall be, at all times, a Court of Record, and shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the said town of Calcutta, and factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto.

Provision for  
Supreme  
Court

Power and  
jurisdiction  
of Supreme  
Court

14. Provided nevertheless, that the said new charter which His Majesty is hereinbefore empowered to grant, and the jurisdiction, powers, and authorities to be thereby established, shall and may extend to all British subjects who shall reside in the kingdom or provinces of Bengal, Behar and Orissa, or any of them, under the protection of the said United Company; and the same charter shall be competent and effectual: and the Supreme Court of Judicature therein and thereby to be established, shall have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any

crimes, misdemeanours or oppressions, committed or to be committed; and also to entertain, hear and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint against any person who shall, at the time when such debt or cause of action or complaint shall have arisen, have been employed by or shall then have been, directly or indirectly, in the service of the said United Company, or of any of His Majesty's subjects.

15. Provided also, that the said Court shall not be competent to hear, try or determine any indictment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General, or any of the said Council, shall or may be charged with having committed in Bengal, Behar and Orissa.

\* \* \* \* \*

17. And it is hereby further enacted and provided, that nothing in this Act shall extend to subject the person of the Governor-General, or of any of the said Council or Chief Justice and Judges respectively for the time being, to be arrested or imprisoned upon any action, suit or proceeding in the said Court.

\* \* \* \* \*

23. And no Governor-General, or any of the Council of the said United Company's Presidency of Fort William in Bengal or any Chief Justice or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person, or persons, for his or their use or on his or their behalf accept, receive or take, of or from any person or persons, in any manner or on any account whatsoever, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity, or reward; and that no Governor-General, or any of the said Council, or any Chief Justice or Judge of the said

Provision  
against  
receiving  
presents and  
carrying on  
private  
trade



Court, shall carry on, be concerned in, or have any dealing or transactions, by way of traffic or commerce of any kind whatsoever, either for his or their use or benefit, profit or advantage, or for the benefit or advantage of any other person or persons whatsoever (the trade and commerce of the said United Company only excepted); an usage or custom to the contrary thereof in any wise notwithstanding.

\* \* \* \* \*

36. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Governor-General and Council of the said United Company's settlement at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations for the good order and civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances, and regulations, not being repugnant to the laws of the realm), and to set, impose, inflict and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations; but nevertheless, the same or any of them, shall not be valid or of any force or effect, until the same shall be duly registered and published in the said Supreme Court of Judicature, which shall be, by the said new charter, established, with the consent and approbation of the said Court, which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the Court house or place where the said Supreme Court shall be held; and from and immediately after such registry as aforesaid, the same shall be good and valid in law; but, nevertheless, it shall be lawful for any person or persons in India to appeal therefrom to His Majesty, his Heirs or Successors, in Council, who are hereby empowered, if they think fit, to set aside and repeal any such rules, ordinances, and regulations respectively, so as such appeal or notice thereof, be lodged in the said new Court of Judicature

Governor-General and Council to make regulations

Regulations to be registered in Supreme Court

within the space of sixty days after the time of the registering and publishing the same ;

37. Provided always . . . that the said Governor-General and Council shall, and they are hereby required, from time to time, to transmit copies of all such rules, ordinances, and regulations as they shall make and copies of issue to one of His Majesty's Principal Secretaries of State for the time being, and that it shall and may be lawful to and for His Majesty, his Heirs and Successors, *from time to time, as they shall think necessary, to signify to the said United Company, under his or their sign manual, his or their disapprobation and disallowance of all such rules, ordinances and regulations ;* and that from and immediately after the time that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature at Fort William in Bengal, all such rules, ordinances, and regulations shall be null and void ; but in case His Majesty, his Heirs and Successors, shall not, within the space of two years from the making of such rules, ordinances and regulations, signify his or their disapprobation or disallowance thereof, as aforesaid, that then, and in that case, all such rules, ordinances and regulations shall be valid and effectual, and have full force.

\* \* \* \*

39. And if any Governor-General, President or Governor or Council of any of the said Company's principal or other settlements in India, or the Chief Justice or any of the Judges of the said Supreme Court of Judicature, to be by the said New Charter established or of any other Court in any of the said United Company's settlements, or any other person, or persons who now are or heretofore have been employed by or in the service of the said United Company, in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed any power or authority or jurisdiction by or from the said United Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act or shall have been or shall be

guilty of any crime, misdemeanour or offence, committed against any of His Majesty's subjects, on any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences and misdemeanours may be respectively enquired of, heard, tried and determined in His Majesty's Court of King's Bench, and all such persons so offending, and not having been before tried for the same offence in India, shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said Court shall think fit; and moreover shall be liable, at the discretion of the said Court, to be adjudged to be incapable of serving the said United Company in any office, civil or military; and all and every such crimes, offences and misdemeanours as aforesaid, may be alleged to be committed, and may be laid, enquired of and tried, in the County of Middlesex<sup>1</sup>.

# 10. LORD NORTH'S SPEECH ON THE EAST INDIA COMPANY BILL, 1773.

(May 18, 1773).

Sir; the interposition of Parliament in the Necessity of affairs of the East India Company has met, Sir, Parliamentary inter-vention with the approbation of all moderate, well-informed

<sup>1</sup> 'Provisions for the trial and punishment in England of offences committed by the Company's servants in Bengal' were made by Acts of 1754 and 1770. The Act of 1770 (10 Geo. III, C. 47) declared: "That any person or persons whatsoever, employed by or in the service of the Company, in any civil or military station, office, or capacity whatsoever, in the East Indies, or deriving or claiming any power, authority or jurisdiction from the said Company, shall, after the passing of this Act, be guilty of oppressing any of his Majesty's subjects beyond the seas within their respective jurisdictions; or in the exercise of any such station, office, employment, power or authority, shall be guilty of any other crime, or offence; such oppressions, crimes, and offences shall and may be enquired of, heard, and determined, in his Majesty's Court of King's Bench in England; and such punishments shall be inflicted on such offenders, as are usually inflicted for offences of the like nature committed .....in England." Probably the term 'His Majesty's subjects' excluded persons of Asiatic descent. See Ilbert, *The Government of India*, p. 284.

and considerate persons. . . . Since these matters have been under consideration, the right and motives of Parliament have been strangely questioned in the whole business, much of which I apprehend has been owing to the jobbers in the Alley. . . . It is impossible, Sir, but the candid part of the Company must be sensible, and acknowledge, that the right, duty, and propriety of the state to interpose in this case is essentially necessary to the well being, nay of the existence of the Company. It is upon these principles that I imagine the Bill I now bring in will in all its parts be approved ; as every article in it is framed with a view to the placing the affairs of the Company on a solid, clear, and decisive establishment

**11. PETITION OF THE EAST INDIA COMPANY TO THE HOUSE OF COMMONS  
ON LORD NORTH'S EAST INDIA  
COMPANY BILL, 1773.**

(May 28, 1773).

That the said Bill, if passed into a law, will destroy every privilege which the petitioners hold under the most sacred securities that subjects can depend upon in this country ; and that the appointing of officers by Parliament, or the Crown, to be vested with the whole civil and military authority of the presidency of Bengal, and also the ordering, management, and government, of all the territorial acquisitions and revenues of the Company, in the kingdoms of Bengal, Behar, and Orissa, together with the other superintending powers over the settlements of Bombay and Madras, independent of any choice in the Company, or any real power of control in the directors or general courts of the said Company, or power in the Company of removing the said officers for misbehaviour, or filling up of vacancies in case of death or avoidance, is a measure so extraordinary (while the possessions are alleged to remain in the Company) that the petitioners beg leave to call the attention of Parliament to this most alarming circumstance, before the House shall give a sanction to an act, which, under the colour

Virtual transfer of Company's power to Crown

of regulation, will annihilate at once the powers of the East India Company, and virtually transfer them to the Crown ; and that the said Bill is destructive of the essential rights and interests of the petitioners in many other respects ; and is further defective as to many of the purposes for which it is declared to be framed ; and that the petitioners look upon this Bill as tending to destroy the liberties of the subject, from an immense addition of power it must give to the influence of the Crown ; and that the petitioners have never been made acquainted with any charge of Company delinquency having been made against them in Parlia- given no ment, and if any such charge has been made, they have chance to defend never been called upon to be heard against it ; and itself that they cannot therefore suppose that any such delinquency on the part of the Company has been noted ; which delinquency, however, is made the ground of this Bill ; and that the same may not pass into a law.

## 12. BURKE'S SPEECH ON LORD NORTH'S EAST INDIA COMPANY BILL, 1773.

(June 10, 1773).

He said, that the House had created very few new powers, or new instructors or instructions, notwithstanding they had blackened in the preamble without cause, those who had hitherto acted ; for they had still continued Mr. Hastings, Mr. Barwell, and Mr. Monson ; that he was glad to find that these men, though blackened in the preamble, were fair again in the body of the Bill. He observed, that this Bill was not, nor could be supported by fair and solid arguments from its promoters, but was like a foot-ball kept up between heaven and earth by the buffets it received ; that they were endeavouring to regulate things by this Bill, which in a short time would regulate themselves No necessity of regulat- by the same powers that had governed that country ing Com- hitherto well, and were likely to govern it better ; pany's affairs that if the House would but allow a short time, these disorders, few as they were, would be able to correct themselves, that the Company surely had done great

Remarks  
on Supreme  
Court

things, and would still do greater, if they were suffered to go on. He observed, that the appointment of the chief justice and judges was lodged in the King, but that he could see no reason for that, unless metaphors in discourse were become the solid grounds of argument; and that the only reason the House had given for such appointment, was from the common phrase, that the King was the foundation of justice; he was sorry to say, that this Bill was forced in at the end of a fatiguing session, by the unfortunate words 'do something,' that the principle of it was an infringement of national right, national faith, and national justice.

### 13. PROTEST<sup>1</sup> OF 13 PEERS<sup>2</sup> AGAINST LORD NORTH'S EAST INDIA COMPANY BILL.

(June 19, 1773).

No evidence  
to support  
preamble

1st, Because the preamble to this Bill, stating defects in the powers of the East India Company, abuses in its administration, and injuries to public and commercial credit, ought to have been supported by evidence adapted to the nature of the several matters alleged

Violation of  
Company's  
Charter  
and British  
Constitution

2ndly, Because, if the defects in the charters, and abuses in the administration of the Company, exist in the manner stated in the preamble, no effectual provision is made in the enacting part of the Bill for supplying the one or reforming the other. This mode of vesting ultimately the whole management of the Company's weighty political affairs, their vast revenues, and their extensive commerce, in the King's private discretion, without any provision in the Bill for the intervention of any public body, (either the East India Company, or the privy council), or any responsible public minister, is, we insist, not only an high and dangerous violation of the yet unquestioned charters of the Company, but a total subversion of all

<sup>1</sup> This Protest was entered upon the Journals of the House of Lords.

<sup>2</sup> Abingdon, Torrington, Boyle, Grosvenor, Devonshire, Ponsonby, Portland, King, Milton, Richmond, Archer, Rockingham, Fitzwilliam.

the principles of the law and constitution of this kingdom :

3rdly, Because the election of executive officers in Parliament is plainly unconstitutional, and an example of the most pernicious kind, productive of intrigue and faction, and calculated for extending a corrupt influence in the Crown. It frees Ministers from responsibility, whilst it leaves them all the effect of patronage

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5thly, Because the violation of the charter is not justified by the importance of the provisions of this Bill, which operates only to transfer patronage without conferring new powers : it being expressly provided by the Bill, that these powers should be the same as were formerly exercised by the Company's servants under the Company's authority

6thly, Because the appointing judges by the nomination of the Crown with large salaries, payable out of the Company's revenue, without the Company's consent either to the appointment or the payment, is an act of flagrant injustice, and an outrage on all the rights of property Attack on Company's rights of property

7thly, Because the clause of this Bill which deprives all proprietors not possessed of £1,000 capital stock, disfranchising, without the assignment of any delinquency or abuse, no less than 1,246 persons legally qualified, is an heinous act of injustice, oppression, and absurdity, and a gross perversion of the high powers entrusted to Legislature. Disfranchisement of Company's shareholders

8thly, Because the lengthening the continuance of the direction, while the body of the proprietors is disfranchised, and the making the directors dependent on the private will of the King for the exertions of the little authority left to them in India by this Act, tends to pervert all the powers of that great body into mere instruments of the Court, and to extend influence of the worst kind in the worst manner in which it can be exerted. Increase of influence of Crown

Violation of  
Parliamentary  
security

9thly, Because the great principle upon which the Bill has been supported will not only in this, but in all cases, justify every infringement of the national faith, and render Parliamentary sanction the worst of all securities. We never can admit that a mere speculation of political improvement can justify Parliament in taking away rights which it has expressly covenanted to preserve.

#### 14. LETTERS PATENT ESTABLISHING A SUPREME COURT AT FORT WILLIAM, 1774.

(March 26, 1774).

Whereas by an Act of Parliament, passed in the Thirteenth Year of Our Reign<sup>1</sup>, reciting a charter<sup>2</sup> of King George the Second, by him granted to "The United Company of Merchants of England, trading to the East Indies;" thereby amongst other Things, constituting and establishing Courts of Civil, Criminal, and Ecclesiastical Jurisdiction, at the said United Company's Settlements, at Madraspatnam, Bombay, and Fort William in Bengal; and that the said charter does not sufficiently provide for the due Administration of Justice, in such manner as the State and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company

<sup>1</sup> Regulating Act.

<sup>2</sup> For details about George II's Charter, January 8, 1753, see D. N. Banerjee, *Early Administrative System of the East India Company in Bengal*, Vol. I, pp. 557 ff. Its provisions were exactly similar in all respects in the cases of Bengal, Madras and Bombay. The Mayor's Court became a Court of Record. It was authorized "to try, hear and determine, all Civil Suits, Actions, and Pleas, between Party and Party, that shall or may arise, or happen, or that have already arisen, or happened, within the said town or factory of Calcutta, at Fort William, in Bengal, or within any of the factories, subject or subordinate thereunto." But it was not to have any jurisdiction over "such suits or actions" "between the Indian Natives" of Calcutta "only." These were to be "determined among" the parties, unless they "by consent" submitted "the same to the determination of the said Mayor's Court." The President and Council of Fort William were constituted a Court of Record to hear appeals against decisions of the Mayor's Court.



shall remain in the possession of the Territorial Acquisitions, there-in-before mentioned, do and must require.

Now know ye, that we . . . have thought fit to grant, direct, ordain, and appoint . . . that there shall be, within the Factory of Fort William at Calcutta, in Bengal, a Court of Record, which shall be called "The Supreme Court of Judicature, at Fort William, in Bengal": And we do hereby create, direct, and constitute, the said Supreme Court of Judicature, at Fort William in Bengal, to be a Court of Record.

Establishment of a Court of Record, called Supreme Court

Chief Justice and (three) Puisne Justices shall be Barristers in England or Ireland, of not less than Five years' standing, to be named and appointed, from Time to Time, by us, Our Heirs and Successors, by Letters Patent . . . and they shall all and every of them hold their said offices, severally and respectively, during the pleasure of Us, Our Heirs and Successors, and not otherwise.

Qualifications, appointment and tenure of Judges

And the said Chief Justice, and the said Puisne Justices, shall severally and repeatedly be, and they are all and every of them hereby appointed, to be Justices and conservators of the Peace, and Coroners, within and throughout the said Provinces, Districts, and Countries of Bengal, Bahar and Orissa, and every part thereof; and to have such Jurisdiction, and Authority, as Our Justices of Our Court of King's Bench have and may lawfully exercise, within.

Nature of jurisdiction

England, by the common Law thereof . . . in case they (Chief Justice and Puisne Justices) shall be equally divided, the Chief Justice, or, in his Absence, the Senior Judge present, shall have a double or casting Voice.

Casting Vote

. . . all Writs, Summons, Precepts, Rules, Orders, and other Mandatory Process, to be used, issued or awarded, by the said Supreme Court of Judicature, . . . shall run, and be in the Name and Stile of Us, or of Our Heirs and Successors. . . .

Writs, etc., to be in King's name

\* \* \* \* \*

. . . the said Sheriff, and his Successors, . . . are hereby authorized to execute all the Writs,

Summons, Rules, Orders, Warrants, Commands, and Process of the said Supreme Court. . . . and to receive and detain in Prison such Persons as shall be committed to him for that Purpose, by the said Supreme Court . . . . .

Power and jurisdiction of the Supreme Court . . . . . the said Supreme Court may and shall have Power and Jurisdiction, and is hereby authorized to hear, examine, try and determine. . . . all Actions and Suits, which shall or may arise, happen, be brought, or promoted, upon or concerning any Trespasses or Injuries, of what Nature or Kind soever, or any Debts, Duties, Demands, Interests or Concerns, of what Nature or Kind soever, or any Rights, Titles, claims, or Demands, of, in, or to any Houses, Lands, or other Things, real or personal, in the several Provinces or Districts, called Bengal, Bahar, and Orissa, or touching the possession, or any Interest or Lien, in or upon the same, and all Pleas, real, personal or mixt, the causes of which shall or may hereafter arise, accrue and grow, or shall have heretofore arisen, accrued and grown, against the said United Company. . . . . and against the said Mayor and Aldermen of Calcutta. . . . . and against any other of Our Subjects, who shall be resident within the said Provinces, Districts or Countries, called Bengal, Bahar, and Orissa, or who shall have resided there, or who shall have any Debts, Effects, or Estate, real or personal, within the same, and against the Executors and Administrators of such Our Subjects, and against any other Person, who shall, at the Time of such Action being brought, or at the Time when any such Cause of Action shall have accrued, be or have been employed by, or be or have been, directly or indirectly, in the Service of the said United Company, or of the said Mayor and Aldermen, or of any other of Our Subjects: Provided always, that it shall not be competent to the said Supreme Court . . . . . to try or determine any Suit or Action, against any Person, who shall never have been resident in the Provinces of Bengal, Bahar, and Orissa, or any One of them, nor against any Person then resident in Great Britain, or

Ireland, unless such Suit or Action, against such Person, so then resident in Great Britain and Ireland, shall be commenced within Two years after the Cause of Action arose, and the sum to be recovered be not of greater value than Thirty Thousand Rupees ; and the said Supreme Court shall have the like Power and Jurisdiction, and is hereby authorized to hear, examine, try, and determine, all such causes, Actions, and Suits as aforesaid, arising, growing, and to be brought or promoted against every other Person or Persons whatsoever, Inhabitants of India, residing in the said Provinces, Districts, or Countries of Bengal, Bahar, and Orissa, upon any Contract or Agreement in Writing, entered into by any of the said Inhabitants, with any of His Majesty's Subjects, where the Cause of Action shall exceed the Sum of Five Hundred current Rupees, and when such Inhabitants shall have agreed in the said Contract, that, in case of Dispute, the Matter shall be determined in the said Supreme Court

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And Whereas Contracts, or Agreements in Writing, may be entered into by some of the Inhabitants of India, residing in the said Provinces or Districts of Bengal, Bahar, and Orissa, or some of them, or some part thereof, with Our British Subjects, or some of them, wherein such Inhabitant and Inhabitants may agree, that, in case of Dispute, the Matter should be heard and determined in the said Supreme Court , and whereupon a cause or causes of Action may arise, exceeding in Value respectively the sum of Five Hundred current Rupees, and Suits may be brought thereupon, in some of the Courts of Justice, already established in the said Provinces or Districts, We do hereby further grant, ordain, establish and appoint, that in such cases, it shall be lawful for either Party, before or after Sentence or Judgment pronounced therein, by his, her, or their humble Petition, suggesting such Agreement in Writing as aforesaid, and verifying the same upon Oath, to appeal to the said Supreme Court. . . . and upon such Petition. . . .

Appellate  
jurisdiction  
of Supreme  
Court

the said Supreme Court. . . . may, and is hereby authorized to award and issue a writ, or Precept, directed to the other party or parties, commanding him, her, or them, immediately to surcease proceeding further in such Suit or Suits and thereupon such Supreme Court shall determine thereupon, according to Right and Justice, in like Manner as if no Proceeding had been in such other Court of Justice.

Supreme Court to be a Court of Equity and to have the power of compelling attendance of parties, etc. . . . the said Supreme Court . . . should also be a Court of Equity, and shall and may have full Power and Authority to administer Justice in a summary Manner, as nearly as may, according to the Rules and Proceedings of Our High Court of Chancery, in Great Britain, and upon a Bill filed, to issue Subpoenas, and other Process, . . . to compel the Appearance, and Answer upon Oath of the Parties therein complained against, and Obedience to the Decrees and Orders of the said Court of Equity, in such Manner and Form, and to such Effect, as Our High Chancellor of Great Britain doth, or lawfully may, under Our Great Seal of Great Britain.

Supreme Court to be a Court of Oyer and Terminer, and Gaol Delivery . . . the said Supreme Court shall also be a Court of Oyer and Terminer, and Gaol Delivery, in and for the Town of Calcutta, and Factory of Fort William in Bengal aforesaid, and the Limits thereof, and the Factories subordinate thereunto; and shall have the like Power, and Authority, as Commissioners or Justices of Oyer and Terminer, and Gaol Delivery, have or may exercise, in . . . England, to enquire, by the Oaths of good and sufficient Men, of all Treasons, Murders, and other Felonies, Forgeries, Perjuries, Trespasses, and other Crimes, and Misdemeanors heretofore had, done, or committed, or which shall hereafter be had, done or committed, within the said Town or Factory, and the Limits aforesaid, and the Factories subordinate thereto . . . .

And whereas Cases may arise, wherein it may be proper to remit the general Severity of the Law, We do hereby authorize and empower the said Supreme Court of Judicature. . . . to reprieve and suspend the Execution of any Capital sentence, wherein there

shall appear, in their judgment, a proper occasion for mercy, until Our Pleasure shall be known, and they shall in such case transmit to Us a State of the said case, and of the Evidence, and of their Reasons for recommending the Criminal to Our Mercy ; and in the mean Time, they shall cause such Offender to be kept in strict custody, or deliver him or her out to sufficient Mainprise or Bail, as the Circumstances shall seem to require.

Supreme Court may reprieve or suspend execution of sentence

all and every the said Courts<sup>1</sup> and Magistrates<sup>2</sup> shall be subject to the Order and controul of the said Supreme Court in such Sort, Manner, and Form, as the inferior Courts and Magistrates of, and in. England, are by Law, subject to the Order and Controul of Our Court of King's Bench ; to which End, the said Supreme Court

Courts established by Charter of George II to be subordinate to Supreme Court

is hereby empowered and authorized to award and issue a Writ or Writs of Mandamus certiorari procedendo, or Error, to be prepared in Manner above-mentioned, and directed to such Courts or Magistrates, as the case may require, and to punish any contempt of a wilful Disobedience thereunto, by Fine and Imprisonment.

the said Supreme Court shall be a Court of Ecclesiastical Jurisdiction, and shall have full power and Authority, to administer and execute, within and throughout the said Provinces, Districts, or Countries, called Bengal, Bahar and Orissa and towards and upon Our British Subjects there residing, the Ecclesiastical Law, as the same is now used and exercised in the Diocese of London, so far as the circumstances and Occasions of the said Provinces and People shall admit or require.

Ecclesiastical jurisdiction of Supreme Court

\* \* \* \*

the said Supreme Court shall be a Court of Admiralty, in and for the said Provinces, Countries, or Districts, of Bengal, Bahar, and Orissa,

Admiralty jurisdiction of Supreme Court

<sup>1</sup> Court of Requests and Court of Quarter Sessions established by Charter of George II.

<sup>2</sup> Justices, Sheriffs and Magistrates appointed by Charter of George II.

and all other Territories and Islands adjacent thereunto, and which now are or ought to be dependent thereupon . . . . .

\* \* \* \* \*

Appeal to . . . . . if any Person shall find him, her, or themselves aggrieved, by any Judgment, Decree, Order, or Rule, of the said Supreme Court . . . . . in any case whatsoever, it shall and may be lawful, for him and them to appeal to Us, Our Heirs or Successors, in Our or their Privy Council. . . . .

Appeal to . . . . . in all Indictments, Informations, and Criminal Suits and causes whatsoever, the said Supreme Court . . . . . shall have the full and absolute power and authority to allow, or deny, the Appeal of the Party pretending to be aggrieved, and also to award, order and regulate, the Terms upon which such Appeals shall be allowed, in such cases in which the said Supreme Court . . . . . may think fit to allow such Appeal.

\* \* \* \* \*

Provision regarding Governor-General, Councillors, and Judges of Supreme Court . . . . . the Person or Persons of the Governor-General, or of any of the Council, . . . . . or of the Chief Justice, or any of the Justices of the said Supreme Court . . . . . shall not, nor shall any of them respectively, be subject or liable to be arrested, or imprisoned, upon any Action, Suit, or Proceeding in the said Court, except in Cases of Treason or Felony ; nor shall the said Supreme Court . . . . . be competent to hear, try and determine, any Indictment or Information, against the said Governor-General or any of the said Council, for the Time being, for any Offence, not being Treason or Felony, which the said Governor-General, or any of the said Council, shall or may be charged with having committed, in Bengal, Bahar, or Orissa, any Thing herein before contained to the contrary notwithstanding ; but in all such cases above mentioned, wherein a capias, or Process, for arresting the Body is hereby given and provided, it shall and may be lawful, for the said Supreme Court . . . . . to order the Goods and Estate of such Persons to be seized and sequestered, until he or they respectively

shall appear, and yield Obedience to the Judgment, Decree, or other order or Rule of the said Court.

\* \* \* \* \*

And We do further hereby strictly charge and command all our Governors, Commanders, Magistrates, Officers and Ministers, Civil and Military, and all our faithful and liege subjects whatsoever, in and throughout the said Provinces, Countries or Districts, of Bengal, Bahar and Orissa, and all other Lands, Islands, or Territories, adjacent thereunto, and which are or ought to be dependent thereupon, that in the Execution of the several Powers, Jurisdictions and Authorities, hereby erected, created and made, they be aiding, assisting, and obedient in all Things, unto the said Supreme Court. . . as they will answer the contrary at their Peril.

All officers  
and subjects  
of the King  
to be  
obedient  
to Supreme  
Court

# 15. THE SUPREME COURT ON THE POSITION OF THE NAWAB OF BENGAL.

(Letter from Governor-General-in-Council to Court of Directors, January 15, 1776).

Since the Death of Meer Jaffier, the Company have guaranteed the Subadarry of Bengal, by Three successive Treaties, to his Descendants. . . . When you wrote your Letter of the 3rd March last, you had it then immediately under your consideration, with the Act of Parliament<sup>1</sup> before you, to give us such Instructions as you thought necessary for our guidance in supporting the Rights of the Nazim against the Encroachments of the French, who refused submission to the Laws and Authority of the established Government. You tell us you are determined to assist the Government in preventing the Abuse of the Firmain Privilege; that you are engaged by solemn stipulation to support the Nizamut; you direct us to afford the country Government all necessary Assistance in the Execution of such equitable Laws as may be framed for the protection of the Natives; that as to the erecting of new Factories, however the French may

Company  
recognised  
the *de jure*  
authority  
of the  
Nawab

<sup>1</sup> Regulating Act.

affect to despise the Nabob, it is with him alone they are to treat on that subject, and should they at any time attempt to establish other Factories than those possessed by France in 1749, you do not hesitate to direct, that we forthwith apply to the Nabob, and use our utmost endeavours to engage him to prevent all such establishments.

\* \* \* \* \*

It is not possible to mistake your Meaning and intention in giving us the preceding instructions; you acknowledge the Existence and Authority of the Country Government; you admit the Rights of the Nazim vested in the present Subadar, and you direct us to support him in the Exercise of them, and to make a new Treaty with him: the Acts in which you require us to support him, are Acts of Sovereignty.

You must already have observed how inconsistent both the letter and spirit of these instructions are with the Doctrines solemnly delivered by the Judges, in a case<sup>1</sup> on which they thought fit to decide, without any apparent Necessity, upon the whole Rights of the Nabob. Mr. Justice Hyde says, "The Act of Parliament<sup>2</sup> does not consider Mobaruck-ul-Dowla as a sovereign Prince; the jurisdiction of this Court extends over all his Dominions; his situation is not such as will enable him to confer the character of Ambassador."

The Supreme Court treated the Nawab as a 'phantom'

Mr. Le Maistre says, "With regard to this Phantom, this Man of straw, Mobaruck-ul-Dowla, it is an insult on the understanding of the Court, to have made the question of his sovereignty. But it comes from the Governor General and Council; I have too much respect for that body to treat it ludicrously, and I confess I cannot consider it seriously."

Mr. Chambers declines giving any direct opinion on the subject.

The whole tendency of the Chief Justice's opinion, is, to shew that the Nabob is a mere empty name,

<sup>1</sup> Case of Radhacharan. See I. Banerjee, *The Supreme Court in Conflict*, pp. 154-163.

<sup>2</sup> Regulating Act.



without any real right, or the exercise of any power whatsoever; he expressly says, "That the Agents of the East India Company (meaning the Governor and Council of this Presidency) cannot, by making the Nabob the instrument, do indirectly what they would not assume to do directly."

We have then the unanimous opinion of the Court, "That neither the East India Company nor their servants, both being subject to the laws of the King of Great Britain, can, by interposing the Name of the Nabob, screen any Criminal from the Justice of the Court;" and this they call an illegal Execution of the Powers of a double Government to defeat the King's Laws.

## 16. WARREN HASTINGS ON HIS CONFLICT WITH THE COUNCIL, 1776.

(Letter to Laurence Sullivan, March 21, 1776).

The maxims which I laid down for my conduct, and by which it was invariably guided, were these :— **Maxims** followed by **Hastings**  
 First, to implant the authority of the Company, and the sovereignty of Great Britain, in the constitution of this country. Secondly, to abolish all secret influence, and make the government itself responsible for all measures, by making them all pass by its avowed authority. Thirdly, to remove all impediments which prevented the complaints of the people from reaching the ears of the supreme administration, or established an independent despotism in its agents. Fourthly, to relieve the *ryots* from oppressive taxes. Fifthly, to introduce a regular system of justice and protection into the country. Sixthly, to relieve the distress of the Company at home; you know how great they were; and pay off their heavy debts here by a uniform and regular mode of collecting their rents, by savings in expenses, and by foreign acquisitions of wealth. And lastly, to extend the political influence of the Company without enlarging their territory or dividing their military strength.

The present government has proceeded on principles diametrically opposite to mine. First, they have broken all the arrangements which I made in the

Work of  
Hastings  
reversed  
by the  
Majority

Nawab's family in 1772; replaced Mahomed Reza Khan; restored the office of Naib Suba; dismissed the Begum from her office<sup>1</sup>; publicly proclaimed the Nawab's sovereignty and disclaimed that of the Company. Secondly, they have made their own power uncontrolled, and contrived to preclude its operations from public view, by the pretended independency granted to Mahomed Reza Khan. Thirdly, they have abolished, or rendered of no effect, all the courts of justice, and avow their intentions of restoring the collectorships. Fourthly, they exclaim against me for overcharging the revenue. Sixthly, they have branded the suspension of the King's<sup>2</sup> tribute with the appellation of violation of public faith; they have called the cession of Kora the the sale of others' property; they have called the subsidy which I had fixed with the Vizier<sup>3</sup> at 210,000 rupees (and which they had augmented to 260,000 rupees), and the stipulation for the Rohilla war, a mercenary prostitution of the Company's arms for hire; they have paid off a part of the bonded debt with the means furnished by these acts of injustice, and now lay claim to the whole merit of it, though it is impossible for them to produce a single intance, in the whole period of this administration, of a rupee saved, or a rupee gained, by any measure of theirs, except the later acquisition of Benares, obtained at the expense of twice the amount of its yearly revenue, which the Nawab of Oudh owes to the Company, and which he can never pay them

**17. WARREN HASTINGS ON THE CONFLICT  
BETWEEN THE GOVERNOR-GENERAL-IN-  
COUNCIL AND THE SUPREME COURT, 1776.  
(Letter to Laurence Sullivan, March 21, 1776).**

I assure you that it is scarce possible to have acted with more moderation or caution than

<sup>1</sup> Mani Begam, Mir Jafar's wife, was appointed guardian of the minor Nawab.

<sup>2</sup> Emperor Shah Alam II.

<sup>3</sup> Nawab Shuja-ud-daula of Oudh, *Wazir* of the Mughal Empire.

Sir Elijah has observed in all cases in which the ordinary process of Supreme Court was likely to affect the collection and management of the public revenue.<sup>1</sup> Indeed, the other judges merit the same testimony in their favour. Had a cordial understanding subsisted between the Court and the Council, much of the inconvenience that has arisen from the writs of the Court would have been avoided, nor would the revenue have been in the least affected by them ; but it seems to have been a maxim of the Board to force the Court into extremities for the purpose of finding fault with them. Yet in many cases the acts of the Court have been, and must continue to be, the unavoidable cause of embarrassment. This is owing to a defect in its constitution. By the limitation of its powers it must ever remain a doubt what is the extent of them, as every man in the provinces is in reality subjected to the authority of the Company. If it was constituted to protect the people from oppression, that design would be entirely frustrated were the Board at liberty to employ agents who should be exempt from its authority ; and you will have seen many instances in the papers which I have sent some of the most glaring acts of oppression committed by the Board which would have produced the ruin of the parties over whom they were exercised but for the protection of the Court. Great complaints have been made of zemindars and others, who are not liable to the jurisdiction of the Court by the plain construction of the Act<sup>2</sup>, having been arrested, and some thrown into prison by its warrants. But no attention has been paid to the necessity which there is of bringing the persons who are even excluded by the Act from the jurisdiction of the Court in the same way before it to establish their exemption. They may plead to its jurisdiction, and obtain their discharge ; but till this is done, I cannot see how it is possible to make the

Moderation  
of the  
Court

Violence  
of the  
Council

Defects in  
the powers  
of the  
Court

Good work  
of the  
Court

<sup>1</sup> For a critical discussion of some of these cases see I. Banerjee, *The Supreme Court in Conflict*. For the point of view of the Court see Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*.

<sup>2</sup> The Regulating Act.

**Justification of the attitude of the Court** distinction, for if every man who declared himself to be no British subject, nor employed by any, was, in virtue of his own declaration, to be exempted from their authority, all men would make up the plea. Their right to this exemption must be tried to be known, and they must be compelled to appear, or give bail for their appearance, that it may be tried.

**Anomalous jurisdiction of the Court** The truth is, that a thing done by halves is worse than if it were not done at all. The powers of the Court must be universal, or it would be better to repeal them altogether. The attempt to make a distinction has introduced the most glaring absurdities and contradictions into the Act<sup>1</sup> which virtually declares the British sovereignty over the provinces even in the qualifications which are made use of to limit it. It is declared that the jurisdiction of the Court shall be exercised over all British subjects, and over all who are, or ever were, in the employ of British subjects, and of course have no relation or dependence on the British sovereignty, which is there usurped over them. Even in the most ordinary process of the Court, the distinction must be broken through or all its acts impeded. The issuing of subpoenas to witnesses is as much an act of authority as warrants of *capias*, and the parties on whom they are served must be liable to penalties in case of disobedience; yet it would be the extreme of absurdity to say that no man should be compelled to appear as an evidence who was not a British subject, because it would be impossible in such a case to administer justice; and it is equally a contradiction to say that the persons over whom the authority of the British law is thus exercised are not amenable to it.

### **18. PLAN OF WARREN HASTINGS TO EXTEND BRITISH INFLUENCE IN INDIA, 1777.**

**(Letter to Alexander Elliot, January 12, 1777).**

You are already acquainted. . . . with the general system which I wish to be empowered to

<sup>1</sup>The Regulating Act.

establish in India, namely, to extend the influence of the British nation to every part of India not too remote from their possessions, without enlarging the circle of their defence or involving them in hazardous or indefinite engagements, and to accept of the allegiance of such of our neighbours as shall sue to be enlisted among the friends and allies of the King of Great Britain. The late Nabob Sujah Dowla, who wanted neither pride nor understanding, would have thought it an honour to be called the Vizier of the King of England, and offered at one time to coin siccas in His Majesty's name. Nor was this a mere visionary project; the credit of such a connexion with the sovereign of a power which has for a long time past made so considerable a figure in Hindostan would of itself be a great advantage. But I am afraid that his chief inducement arose from a great defect in our political constitution, of which he had severely felt the bad effects; I mean the rapid succession of persons entrusted with the rule and administration of the British affairs in this part of our Indian possessions, the consequent want of consistency in their measures, and even in their attachments and engagements; and the caprices to which he was often exposed on the same account. My intention in this digression is to show the advantages which would be derived both by Government and its allies from a direct engagement with them, made with the sanction of the King's name, which would secure it from wanton and licentious violation and render the objects of it more certain and durable

Details of  
the plan

Case of  
Oudh

## 19. THE COURT OF DIRECTORS ON THE SUPREME COURT, 1777.

(Letter to Lord Weymouth, Secretary of State, November 19, 1777).

In the Papers to which we refer your Lordship, it is stated, that the Jurisdiction exercised by the Supreme Court . . . has involved the Servants of the Company, and Officers of the Revenue acting

Bad consequences of the exercise of extended jurisdiction by the Supreme Court under their Authority, in Circumstances of Difficulty and Distress.

That the Exercise of this Jurisdiction must inevitably tend to render the collection of the Company's Revenues impracticable; to abridge the Power of the Supreme Council and subordinate Factories, and thereby to prevent the carrying of any useful Plan into Execution for settling the country and for establishing the Government thereof on a solid and permanent Foundation . . . .

That another consequence to be feared from the Exercise of this Jurisdiction, is the Alienation of the Minds of the Natives; who cannot, without great Concern, see a Body of Laws introduced which clash with their Constitutional Peculiarities, and with their religious Sentiments and Prejudices; and who must feel the most sensible alarms on finding themselves exposed to have their Persons seized, and their Laws of Property changed, by the Orders of a Court to whose Jurisdiction they were Strangers

Nor can we suppose, that these Fears and Apprehensions will appear to your Lordship to be without Foundation, when in the annexed Papers you observe it to be stated,

Charges against the Supreme Court 1. That the Court has extended its Jurisdiction to *Persons* whom it does not appear to have been the Intention of the King or of Parliament, to submit to its Jurisdiction.

2. That it has taken cognizance of *Matters*, both originally and pending the Suit, the exclusive cognizance of which, we humbly conceive it to have been the Intention of the King and Parliament to leave to other Courts.

3. That it has claimed a Right of demanding Evidence, and of inspecting Records, which we conceive it had no Right to demand or inspect.

Under the first Head, your Lordship will observe it is stated,

That Writs have been issued by the Supreme Court into all Parts of the Provinces, for bringing up Zemindars, Farmers, and other Natives, Proprietors of

Lands, to the Court of Calcutta, at the Suit, and to answer to complaints, of Natives.

\* \* \* \*

### The Second Head of Complaint<sup>1</sup>

And here your Lordship will allow us to observe, it is in the Governor and Council that the Act<sup>2</sup>

has vested, in express Terms, *the Ordering, Management and Government of all the Territorial Acquisitions and Revenues in the kingdoms of Bengal, Bahar, and Orissa, in like Manner, to all Intents and Purposes whatsoever, as the same then (at the passing of the Act) were, or at any Time theretofore might have been exercised by the President and Council, or Select Committee, in the said kingdoms.*

Criticism of the claim of Supreme Court to exercise jurisdiction over Dewani matters

By these Words, we humbly conceive it to have been the Intention of the Legislature, to vest in the Dewanee Courts and Provincial Courts, subject only to the Controul of the Governor-General and Council

the exclusive Jurisdiction, in all causes which merely concern the Revenue, in the same Manner as before the passing this Act the same had been vested in the Dewanee Courts or Provincial Councils; subject only to the Controul of the ancient President and Council.

<sup>1</sup> Justice Le Maistre declared that "no true Distinction in Reason, in Law, or justice, can or ought to be made between the East India Company as a trading company, and the East India Company as Dewan of these Provinces." With respect to the management of the territorial revenue he declared that, according to the true interpretation of the Regulating Act, the control of the Governor-General in Council was not exclusive, but subject to the jurisdiction of the Supreme Court. He added that it was equally penal for the Company, or for those acting under it, to disobey the orders and mandatory process of the Supreme Court, in matters which merely concerned the revenues, as in any other matter whatsoever. On this declaration the Governor-General in Council commented in a letter to the Court of Directors, January 15, 1776, "... it is plain, that the Company's office of Dewan is annihilated; that the country government is subverted; and that any attempt on our part to exercise or support the powers of either, may involve us and our officers in the guilt and penalty of high treason; which Mr. Justice Le Maistre expressly holds out *in Terrorem* to all the Company's servants, and others acting under our authority."

<sup>2</sup> Regulating Act.

... if it had been the Intention of the King, or of Parliament, to transfer the Jurisdiction of the Company, as Dewan of Bengal, Bahar, and Orissa (which Jurisdiction is exercised either by the Dewanee Courts, or by the respective Councils of the several Presidencies) to this new Court<sup>1</sup>; or had it been the Intention of the King, or of Parliament, to give to this Court a Participation in, or controul over the others, there would have been clauses containing specific Provisions for that Purpose; whereas, neither the Act nor the Charter<sup>2</sup> have, in this Respect, made any Alteration in the Rights of the Company, or in the Powers heretofore exercised by their Representatives in Matters of Revenue.

\* \* \* \* \*

Under the third Head of Complaint . . .

the Judges have demanded, as a Matter of Right, the Inspection of the Minutes of the Board . . . the Individual Members thereof have been declared responsible for their respective Opinions delivered in Council.

\* \* \* \* \*

The Consequences of such claims cannot escape your Lordship. If the Power assumed by the Judges, of inspecting the Minutes of the Council, of knowing and publishing the Opinion of each individual Member of the Board, be legal, how is it possible that the Board can act as a Council of State? If the Doctrine laid down by the Judges, that each Member is answerable for his Opinion, in an Action of Damages to any Man who shall think he suffers by any Resolution of the Board, be Law, how is it possible that the Board should debate with Freedom, or act with Vigor and Firmness, when no Member can either debate or act with personal safety?

Criticism of  
the claim of  
Supreme  
Court to  
inspect  
records of  
Supreme  
Council

Criticism of  
the claim of  
Supreme  
Court to  
enforce  
English law  
in Bengal

The last Head of Complaint . . . is respecting the Criminal Law of England being in force, and binding, upon the Natives of Bengal. though utterly

<sup>1</sup> Supreme Court.

<sup>2</sup> Letters Patent creating the Supreme Court.



repugnant to those Laws and Customs by which they have formerly been governed.

Maha Rajah Nundcomar, a Native of high Rank in Bengal, was indicted, tried, convicted, and executed, for an Offence which was not capital by the Laws of the Country where the Offence was committed.

Case of  
Nanda-  
kumar

The general Principle which the Judges seem to have laid down in their Proceedings against Nundcomar is, that *all* the Criminal Law of England is in force, and binding, upon *all* the Inhabitants within the Circle of their Jurisdiction in Bengal. This Principle, though it may perhaps have been adopted by the ancient Courts of Judicature, established by the Charters of George 1st and 2nd, would, as we conceive, prove fatal, if pursued through all its consequences, that we might reasonably have expected, that the Judges would at least have softened it in the Application.

For supposing it not to be in the Power of the Judges to mitigate or vary the Punishment affixed by the Criminal Law of England to particular offences, your Lordship will nevertheless perhaps be of Opinion, that as the Prisoner had been thus tried, convicted, and condemned, by a Law of another Country. it would have been a Matter of *Prudence*, at least, in the Court, to have exercised the Power especially given them in the Charter, of respiting the Execution of the Sentence till His Majesty's Pleasure could be known, instead of proceeding to Execution within so short a Space of Time after Conviction; an Authority which existed nowhere else within that Settlement, and which must be supposed to have been given for the Purpose of leaving His Majesty the Power of mitigating, in Instances of this Nature, the Severity of the Law.

The Execution of Nundcomar appears to us the more extraordinary, when we consider, that so late as the year 1765, the Inhabitants of Calcutta were exceedingly alarmed at the Circumstance of a Native

of Bengal<sup>1</sup> having been capitally convicted upon an indictment for Forgery; that the Court of Directors petitioned His Majesty in behalf of the Convict, and that Royal clemency was forthwith extended on that Occasion.

\* \* \* \* \*

Disastrous  
consequences of  
enforcement  
of English  
law by  
Supreme  
Court

We beg your Lordship to consider, what will be the Consequences if the Judges proceed upon the principle of declaring all the other Parts of the Criminal Law of England to be in force in Bengal? and they must so proceed, if they mean to be consistent with themselves.—Can it be just, or prudent, to introduce all the different Species of Felony, created by that which is called the *Black Act*? or to involve, as what is called the Coventry Act involves, Offences of different Degrees in one common Punishment? or to introduce the endless, and almost inexplicable Distinctions, by which certain Acts are or are not Burglary? Can certain Offenders be transported to His Majesty's Colonies in America? or sent to work upon the River Thames? shall every Man convicted for the First Time of *Bigamy*, which is allowed, protected, nay almost commanded by their Law, be burnt in the Hand if he can read, and hanged if he cannot read?<sup>2</sup>

These, my Lord, are some only of the consequences

<sup>1</sup> Radhacharan Mitra.

<sup>2</sup> Impey wrote to the Earl of Rochford on March 25, 1775, "The Court hath already felt great inconvenience in being obliged to inflict upon offenders the same punishments which are inflicted in England for the same offences. I hope I shall not incur your Lordship's censure...the subjects here on which the law is to operate being so different from what they are in England, if I submit to your Lordship's consideration, the propriety of allowing the Supreme Court a discretionary power of condemning an offender convicted of a crime not capital, to such punishment as he shall think his crime shall deserve. Transportation, from the nature of it, is a sentence which in this country cannot be put in execution. Imprisonment, to the inferior indolent Indian, is no punishment; give him a space to lay upon, rice and water, it is a reward; fines are very unequal punishments, the poor cannot pay them, and if the person condemned is not of a caste or rank to which imprisonment would bring disgrace, the richest here would not pay the smallest fine to avoid it...."

which we conceive must follow, if the Criminal Law of England be suffered to remain in force, and binding, upon the Natives of Bengal.—If it were legal to try, to convict, and execute Nundcomar for Forgery, on the Statute of George the Second, it must, as we conceive, be equally legal to try, convict. and to punish the Subahdar of Bengal, and all his Court, for Bigamy, upon the Statute of James the First.

## 20. THE GOVERNOR-GENERAL-IN-COUNCIL ON THE SUPREME COURT, 1780.

(Letter to the Court of Directors, January 25, 1780).

We know not indeed in what Way to reconcile a temporary Jurisdiction by Law over Persons,<sup>1</sup> whom the Law declared to be wholly exempt from it ; but were told, that the allowed Jurisdiction could not be effectual without it ; since, if the Act of Parliament<sup>2</sup> was to be taken in its literal construction, and the Court were not allowed to exercise Jurisdiction, but over those whose Subjection to it had been previously ascertained, it could exercise Jurisdiction over none ; because, unless it could compel Persons, who were affirmed to be Objects of its Jurisdiction, to appear before it, the Question of their subjection to it, or of their Exemption from it, could not be previously ascertained ; and the Act itself, which gave them Jurisdiction in certain cases, and over certain characters, would be nugatory.

Supreme Court's claim to exercise temporary jurisdiction over Zamindars

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With respect to the Right of the Court, derived from the Necessity of a temporary Jurisdiction over Persons whom the Law has excluded from it, we presume to doubt both the Necessity and the Right

Supreme Government's objection to temporary jurisdiction

<sup>1</sup> For details, see I. Banerjee, *The Supreme Court in Conflict*, pp. 121-137. Impey wrote to Lord Weymouth on March 12, 1780, "The Court does not, nor ever did, claim any jurisdiction over Zamindars, but that their character of Zamindars will not exempt them from the jurisdiction of the Court if they be employed or be directly or indirectly in the service of the East India Company or any other British subject."

<sup>2</sup> Regulating Act.

dependent on it. If, instead of receiving the ready Affidavits, declaring persons to be Objects to their Jurisdiction, the Judges had made it their Practice to examine the Grounds of such Declarations, it would have been easy for them, in any case, to have ascertained, whether or not they were conformable to the Sense of the Charter; or if a Doubt had still remained in their Minds, it might easily have been resolved by an Application to us, to be informed whether the Defendant, in any particular Action, was or was not in our Employ. After such Precautions, every Person resisting their Process would have resisted it at his Peril, and the Aid of Government would always have been ready to enforce it.

Consequences of the exercise of temporary jurisdiction by the Supreme Court

It is sufficient for us, that by the Act of Parliament, certain classes of Men in this country are most expressly, and as we understand, assuredly exempted from the Jurisdiction of the Supreme Court, to all Intents and Purposes. If Persons so exempted, must nevertheless obey the Process of the Court; if by not obeying it, they become lawfully subject to Sequestration of their Property, to Fine and Imprisonment, and in short, to all the Penalties usually inflicted for contempt of a lawful Jurisdiction; or, if in Obedience to such Process, a Zamindar, for example, who lives 400 Miles from Calcutta, shall be dragged hither by the Sheriff's Officers, shall be forced to appear before the Court, and wait in Calcutta, and most probably in Jail (since in no case will Bail be found for Debts, stated for Lacks of Rupees) until his Plea to their Jurisdiction shall be determined, which may be many Months, in what Sense are we to understand the Force and Authority *thus far* exercised over him, if the Judges should at last decide, that he is not subject to their Jurisdiction? Is it Jurisdiction, or is it merely an Act of Power, against which no Right can protect him? Under the Operation of such Power, whether lawful or not, we are sure that the Zamindar gains nothing by the Exemption finally acknowledged to be his Right. Of that class of Men, we are perfectly convinced that a very great Majority

would be ruined by the steps prescribed to them, in order to establish it. We will here add what would have been the consequences, had not the Government interfered in Support of the Rajah of Cossijurah.<sup>1</sup> It is almost morally certain, that no Persons of sufficient Responsibility could have been found to have been Bail to the Action in so enormous a Sum as Sicca Rupees 3,00,000. The Rajah must therefore have remained a prisoner in the Jail of Calcutta, till a Decision had taken Place on his Plea. It is most probable, that the Period of his Confinement would not have been less than Twelve Months, as the Plaintiff, doubtful of establishing the Defendant to be an Object of the Jurisdiction of the Court, would have used every Means to protract the Suit, in hopes, that the Sufferings of the Rajah in his Person, as well as his Property, would compel him to make overtures of Accommodation; and in all this Time, his Zemindarry would have remained in a State of Anarchy, and the collections been either wholly neglected or embezzled; or, to prevent these consequences in part, for the Remedy would only be partial, the Rajah must have been wholly dispossessed, and suffered an accumulated injury from necessary Effect of that in which the Act of the Court had already involved him: And this again would have increased the former; for, as a new Authority would have been established in his Country, he would not only have undergone temporary Deprivation, but have been precluded from all Hopes of recovering, either his Inheritance or Liberty, by the Loss of the only Means which he could have of discharging the Debt.

Kasijora  
Case

To those who are acquainted with this Country, and the character of its Natives, it is well known, that among the stubborn and immutable Usages of a People, who, by an unheard of Policy, are thus attempted to be dragged within the Pale of our Laws, there are not any that are so intimately blended with their Natures, so interwoven with their very Existence,

<sup>1</sup> For details, see I. Banerjee, *The Supreme Court in Conflict*, Chapter V.

and a Force upon which were therefore so likely to drive them to Desperation, as those which regard their Women; a Reason, for which, we presume you will think with us, that Policy and Humanity should in all Situations respect them.

And yet with equal Worder and Alarm, we have recently seen the mandatory Process of the Court directed to a Woman of the highest caste and Rank (the Rance of Rajeshahee<sup>1</sup>) who possesses in her own Right, the First great Zemindarry of these Provinces

Case of  
Rani  
Bhabani  
of Natore

Secluded as Women of her superior Rank are, and equally ignorant of the Language and Purpose of the Process, it were to a certainty Disobeyed. The Court adhering to its Rules, a *capias* follows, the Execution of which is probably committed to a Band of armed Ruffians; her House is pillaged, her Temples polluted, the most secret Recesses of her Family violated, and that Sanctity of character trampled upon, which throughout the East, even in times of fiercest hostility, the most barbarous Nations revere in Women.

Happily in this case these Things have not all occurred; but as the indelible Dishonour of a public Exposure, and that inexpressible Pollution from the insufferable Sense of which, according to their Mode of thinking, there is no Refuge but in Death, would have followed, if the Plaintiff had not been persuaded to withdraw his Action. We state this as another of those cases, to which we are confident, that a feeling and enlightened Nation could never have intended to stretch the Authority of its Laws.

## 21. WARREN HASTINGS ON SADAR DEWANI ADALAT, 1780. (Minute, September 29, 1780).

Functions

of *Sadr*  
*Dewani*  
*Adalat*

It (*Sadr Dewani Adalat*) is not only to receive appeals from the decree of the inferior Courts in all causes exceeding a certain amount, but to receive and revise all the proceedings of the inferior Courts,

<sup>1</sup> Rani Bhabani of Natore.

to attend to their conduct, to remedy their defects, and generally to form such new regulations and checks as experience shall prove to be necessary to the purpose of their institution.

That the Chief Justice (of the Supreme Court) be requested to accept the charge and superintendency of the office of *Sudder Diwani Adalat* under its present regulations, and such other as the Board<sup>1</sup> shall think proper to add to them or to substitute in their stead, and that on his acceptance of it he be appointed to it and styled the judge of the *Sudder Diwani Adalat*.

The want of legal powers, except such as were implied in very doubtful constructions of the Act of Parliament,<sup>2</sup> and the hazards to which the superiors of the *Diwani* Courts are exposed in their own persons from the exercise of their functions, has been the principal cause of their remissness, and equally of the disregard which has been in many instances shown to their authority. They will be enabled to act with confidence, nor will any man dare to contest their right of acting when their proceedings are held under the sanction and immediate patronage of the first member of the Supreme Court, and with his participation in the instances of such as are brought in appeal before him and regulated by his instructions. They very much require an instructor, and no one will doubt the superior qualifications of the Chief Justice for such a duty.

It will be the means of lessening the distance between the Board and the Supreme Court, which has perhaps been, more than the undefined powers assumed to each, the cause of the want of that accommodating temper which ought to have influenced their intercourse with each other.<sup>3</sup>

<sup>1</sup> Governor-General's Council.

<sup>2</sup> Regulating Act.

<sup>3</sup> Philip Francis observed, "The Chief Justice cannot be supposed to have changed the opinion which he has at all times so steadily maintained, and those opinions would lead him to submit to the jurisdiction in many instances in which the Council, upon *their* principles, would resist it. Thus the Council, by making the Chief Justice Judge of the *Sudder*

Chief  
Justice of  
Supreme  
Court to be  
judge of  
*Sadr  
Dewani  
Adalat*

Why Chief  
Justice of  
Supreme  
Court should  
be made  
judge of  
*Sadr  
Dewani  
Adalat*

The contest in which we have been unfortunately engaged with the Court bore at one time so alarming a tendency that I believe every member of the Board foreboded the most dangerous consequences to the peace and resources of the Government from them. They are at present composed, but we cannot be certain that the calm will last beyond the actual vacation, since the same grounds and materials of disunion subsist, and the revival of it, at a time like this, added to Our other troubles, might, if carried to extremities, prove fatal. .

## 22. THE EAST INDIA COMPANY ACT, 1780. (21 Geo. 3, C. 70)

Governor-General and Council not subject to Supreme Court That the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal for or by reason of any act or order, or any other matter, or thing whatsoever counselled, ordered or done by them in their public capacity only, and acting as Governor-General and Council.

Immunity for acts done under order of Governor-General and Council 2. And it is hereby enacted and declared, that, if any person or persons shall be impleaded in any action or process, civil or criminal, in the said Supreme Court for any act or acts done by the order of the said Governor-General and Council in writing, he or they may plead the general issue, and give the said order in evidence ; which said order, with proof that the act or acts done has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted and discharged from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Exception 3. Provided always, that with respect to such order or orders of the said Governor-General and Council as do or shall extend to any British subject or subjects, the said Court shall have and retain as full

*Dewannee Adaulut, would put into the power of the very man with whom they have been contending to give up what they hitherto insisted on as their essential rights."*



and competent jurisdiction as if this Act had never been made.

4. Provided, also, that nothing herein contained shall extend or be construed to extend to discharge or acquit the said Governor-General and Council, jointly or severally, or any other person or persons acting by or under their order, from any complaint, suit or process before any competent court in this kingdom, or give any other authority whatsoever to their acts than acts of the same nature and description had, by the laws and statutes of this kingdom before this Act was made<sup>1</sup>.

### 23. FOX'S INDIA BILLS, 1783.

1. *A Bill for vesting the Affairs of the East India Company in the hands of certain Commissioners, for the Benefit of the Proprietors and the Public.*

Whereas disorders of an alarming nature and magnitude have long prevailed, and do still continue and increase, in the management of the territorial possessions, the revenues, and the commerce of this kingdom in the East Indies; by means whereof the prosperity of the natives hath been greatly diminished, and the valuable interests of this nation in the said territorial possessions, revenues, and commerce, have been materially impaired, and would probably fall into utter ruin if an immediate and fitting remedy were not provided :

Be it therefore enacted that the government and management of the territorial possessions, revenues, and commerce of the united Company, by the directors and proprietors of the said Company, or either of them; and all and singular the powers and authorities of the said directors and proprietors, or of any special, or general, or other court thereof, in the ordering and managing the said possessions, revenues, and commerce; and all elections of directors of the said united Company, be, and are hereby declared to be, discontinued, for and during the continuance of

Company's  
Proprietors  
and  
Directors  
deprived  
of power

<sup>1</sup> See A. K. Ghose, *Laws Affecting the Rights and Liberties of the Indian People*, pp. 2-7.

this Act ; any charter, usage, law, or statute to the contrary notwithstanding.

And be it further enacted . . . that for the better governing, ordering, and managing the said territorial governors, revenues, and commerce, the right hon.<sup>1</sup> Appoint-ment of seven Com-missioners by Parlia-ment . . . shall be, and they are hereby constituted and appointed directors of the said United Company, and shall be, and they are hereby constituted, members of the said Company ; and that the said directors hereby appointed, or any three of them, shall have, use, possess, and exercise all and singular the powers and authorities which have been at any time heretofore vested in, or lawfully exercised by, the said directors hereby discontinued, or proprietors, or by the general court of proprietors of the said united Company, and all such further and other powers and authorities .

\* \* \* \* \*

II. *A Bill for the better Government of the Territorial Possessions and Dependencies in India.*

Preamble Whereas great disorders have prevailed in the government of the British territorial possessions, and dependencies thereof in India ; and the Laws and law-ful authority of this kingdom have not been duly obeyed by divers of the servants of the united Company

For remedy whereof in future, be it declared and enacted that there is not, nor hath been, any privilege, authority, power, pre-eminence, or juris-diction granted, or meant or intended to be granted, in and by an Act of the 13th year of the Regulating Act did not give any immunity to Company's servants or in and by any other act or acts whatsoever, or in or by any law or usage whatsoever, for the Governor-General and Council of Bengal, or either or any of them, collectively or individually, or any other person whatsoever in the service of the said United Company, which doth or shall in any manner exempt him or them, in the exercise of any powers or authorities whatsoever, from a strict and faithful obedience to the orders and directions which have been

<sup>1</sup> Here follow the names of seven commissioners.

<sup>2</sup> Regulating Act.

issued to or for them from the late or any other Court of directors, or which shall or may be issued to or for them by the commissioners named and appointed in an Act of this session of Parliament, to manage and govern the affairs of the said United Company.

## 24. THE EAST INDIA COMPANY ACT,<sup>1</sup> 1784. (24 Geo. III, Sess. 2, C. 25).

For the better Government and security of the Territorial Possessions of this Kingdom in the East Indies, be it enacted

Preamble

That it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Commission to be issued under the Great Seal of Great Britain, to nominate and appoint such persons, not exceeding six in Number, as His Majesty shall think fit, being of His Majesty's most honourable Privy Council, of whom one of His Majesty's Principal Secretaries of State for the time being, and Chancellor of the Exchequer for the time being, shall be two, to be and who shall accordingly be Commissioners for the Affairs of India.

Commissioners to be appointed by the King

2. And be it further enacted by the Authority aforesaid, that any Number, not less than Three, of the said Commissioners, shall form a Board for executing the several Powers which by this or any other Act, shall be vested in the Commissioners aforesaid.

Three Commissioners to form Board

3. And be it further enacted, that the said Secretary of State, and in his Absence, the said Chancellor of the Exchequer, and, in the absence of both of them, the Senior of the said other Commissioners, according to his Rank in Seniority of Appointment, shall preside at, and be President of the said Board;

President of Board

and that the said Commissioners shall have, and they are hereby invested with, the Superintendence and Controul over all the British Territorial Possessions in the East Indies, and over the Affairs of the United Company of Merchants trading thereto, in Manner hereinafter directed.

Powers of Board

<sup>1</sup>This Act is generally known as Pitt's India Act.

**Casting vote of President** 4. And be it further enacted, that in case the Members present at the said Board shall at any Time be equally divided in Opinion, in respect to any Matter depending before them, then, and in every such Case, the then President of the said Board shall have two Voices, or the casting Vote.

**King may dismiss and appoint Commissioners** 5. And be it further enacted, that it shall and may be lawful for the King's Majesty, his Heirs and Successors, from Time to Time, at his and their Will and Pleasure, to revoke and determine the Commission aforesaid, and from Time to Time to cause any new Commission or Commissions to be sealed as aforesaid, for appointing any other Person or Persons, being of His Majesty's most Honourable Privy Council, of whom one of His Majesty's Principal Secretaries of State, and the Chancellor of the Exchequer for the Time being, shall always be two, to be Commissioners and Members of the said Board, when and so often as His Majesty, his Heirs or Successors, shall think fit, so that the Number of Commissioners therein to be named shall in no wise exceed the aforesaid number of Six.

**Powers of Board** 6. And be it further enacted, that the said Board shall be fully authorized and empowered, from Time to Time, to superintend, direct, and controul, all Acts, Operations, and Concerns, which in any wise relate to the Civil or Military Government or Revenue of the British Territorial Possessions in the East Indies, in the Manner herein-after directed.

**Appointment of Secretaries, etc.** 7. And be it further enacted, that the said Secretary of State for the Time being shall nominate and appoint such Secretaries, Clerks, and other Officers, as shall be necessary to attend upon the said Board, who shall be subject to Dismission at the Pleasure of the said Board ; and that all Proceedings whatsoever to be had by or before the said Board shall be entered in proper Books ; and that the said Secretaries, Clerks, and other Officers, shall be paid such Salaries as His Majesty shall, by Warrant under his Sign Manual, direct.

**Oath** ' I A. B. do faithfully promise and swear, That, as a Commissioner or Member of the Board for the Affairs

of India, I will give my best Advice and Assistance for the good Government of the British Possessions in the East Indies ; and will execute the several Powers and Trusts reposed in me, according to the best of my Skill and Judgment, without Favour or Affection, Prejudice or Malice, to any Person whatsoever.'

Which said Oath any Two of the Members of the said Board shall, and are hereby impowered to administer ; and the said Oath shall be entered by the said Secretary amongst the Acts of the Board, and be duly subscribed and attested by the Members thereof, at the Time of their taking and administering the same to each other respectively.

\* \* \* \*

10. And, for avoiding any Doubt which may arise, whether the Office or Place of a Commissioner of the said Board, for the affairs of India, or of a Secretary to the said Board, be within any of the Provisions contained in an Act of the sixth Year of the Reign of Queen Anne, intituled, *An Act for the Security of Her Majesty's Person and Government, and of the Succession of the Crown of Great Britain in the Protestant Line* ; or whether the Appointment, of any such Commissioner or Secretary, being a Member or Members of the House of Commons, shall vacate his or their Seat or Seats in that House ; be it further enacted and declared,

That the said respective Offices, Places, or Appointments of a Commissioner, or of the Chief Secretary of the said Board for the Affairs of India, to be made under the Authority of this Act, shall not be deemed or taken to be within the Intent or Purview of the said Act of the sixth year of Queen Anne, whereby to disqualify any such Commissioner or Chief Secretary from being elected, or sitting or voting as a Member of the House of Commons ; nor shall the Appointment of any such Commissioner or Chief Secretary, if a Member or Members of the said House, vacate his or their Seat or Seats in the said House ; any Thing contained in the said Act of the sixth Year of Queen

Commissioners and Chief Secretary not disqualified from sitting in Parliament

Anne, or in any other Act, to the contrary notwithstanding.

11. And, to the Intent that the said Board may be duly informed of all Transactions of the said Company, in respect to the Management of their Concerns in the East Indies ; be it further enacted,

That all the Members of the said Board shall, at all convenient Times, have Access to all Papers and Muniments of the said United Company, and shall be furnished with such Extracts or Copies thereof, as they shall from time to time require ;

and that the Court of Directors of the said United Company shall, and they are hereby required and directed, to deliver to the said Board Copies of all Minutes, Orders, Resolutions, and other Proceedings, of all General and Special Courts of Proprietors of the said Company, and of the said Court of Directors, so far as relate to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, within eight Days after the holding of such respective Courts, and also Copies of all dispatches which the said Directors, or any Committee of the said Directors, shall receive from any of their Servants in the East Indies immediately after the arrival thereof ; and also Copies of all Letters, Orders, and Instructions whatsoever, relating to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, proposed to be sent or dispatched, by the said Court of Directors, or any Committee of the said Directors, to any of the Servants of the said Company in the East Indies ; and that the said Court of Directors of the said United Company shall, and they are hereby required to pay due Obedience to, and shall be governed and bound by, such Orders and Directions as they shall from Time to Time receive from the said Board, touching the Civil or Military Government and Revenues of the British Territorial Possessions in the East Indies.

Relations  
between  
Board and  
Court of  
Directors

Court of  
Directors  
to be guided  
by instructions  
from  
Board

12. And be it further enacted that, within fourteen days after the Receipt of such Copies last-

mentioned, the said Board shall return the same to the said Court of Directors, with their Approbation thereof, subscribed by three of the Members of the said Board, or their Reasons at large for disapproving the same, together with Instructions from the said Board to the said Court of Directors in respect thereof; and that the said Court of Directors shall thereupon dispatch and send the Letters, Orders, and Instructions so approved or amended, to their Servants in India, without further Delay, unless, on any Representation made by the said Directors to the said Board, the said Board shall direct any Alterations to be made in such Letters, Orders, or Instructions; and no Letters, Orders, or Instructions, until after such previous Communication thereof to the said Board, shall at any time be sent or dispatched by the said Court of Directors to the East Indies, on any Account or Pretence whatsoever.

Procedure

13. And, for the readier Dispatch of the Civil and Military Concerns of the said United Company, be it further enacted, that whenever the Court of Directors of the said United Company shall neglect to transmit to the said Board their intended Dispatches on any Subject, within fourteen Days after Requisition made, it shall and may be lawful to and for the said Board to prepare and send to the Directors of the East India Company (without waiting for the Receipt of the Copies of Dispatches intended to be sent by the said Court of Directors as aforesaid) any Orders or Instructions to any of the Governments or Presidencies aforesaid, concerning the Civil or Military Government of the British Territories and Possessions in the East Indies; and the said Directors shall, and they are hereby required to transmit Dispatches in the usual Form (pursuant to the Tenor of the said Orders and Instructions so transmitted to them) to the respective Governments and Presidencies in India, unless, on any Representation made by the said Directors of the said Board, touching such Orders or Instructions, the said Board shall direct any Alteration to be made in the same; which Directions the

PROVISION  
regarding  
despatches  
to be sent  
to India

said Court of Directors shall in such Case be bound to conform to.

14. And be it further enacted, that in case the said Board shall send any Orders or instructions to the said Court of Directors, to be by them transmitted to India, which, in the Opinion of the said Court of Directors, shall relate to Points not connected with the Civil or Military Government and Revenue of the said Territories and Possessions in India, then, and in any such Case, it shall be lawful for the said Court of Directors to apply, by Petition, to His Majesty in Council touching such Orders and Instructions; and His Majesty in Council shall decide whether the same be, or be not, connected with the Civil or Military Government and Revenues of the said Territories and Possessions in India; which Decision shall be final and conclusive.

15. Provided nevertheless, and be it further enacted, that if the said Board shall be of Opinion that the subject Matter of any of their Deliberations concerning the levying of War or making of Peace, or treating or negotiating with any of the Native Princes or States in India, shall require Secrecy, it shall and may be lawful for the said Board to send secret Orders and Instructions to the Secret Committee of the said Court of Directors for the Time being, who shall thereupon without disclosing the same, transmit their Orders and Dispatches in the usual Form, according to the Tenor of the said Orders and Instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall pay a faithful Obedience to such Orders and Dispatches, and shall return their Answers to the same, sealed (under Cover) with their respective Seals, to the said Secret Committee, who shall forthwith communicate such Answers to the said Board.

16. And be it enacted by the Authority afore-said, that it shall and may be lawful to and for the Court of Directors of the said United Company for the Time being, and they are hereby required from

Right of  
Directors  
to appeal  
to King  
against  
Board

Provision  
regarding  
secret  
despatches  
to India

Secret  
Committee  
of Directors



Time to Time, to appoint a Secret Committee, to consist of any Number of the said Directors for the Time being, not exceeding three ;

which Secret Committee shall, from Time to Time, upon the Receipt of any such secret Orders and Instructions concerning the Levying of War or making of Peace, or treating or negotiating with any of the Native Princes or States of India, from the said Commissioners for the Affairs of India, as are hereinbefore mentioned, transmit to the respective Governments and Presidencies in India a Duplicate or Duplicates of such Orders and Instructions, together with Orders in Writing, signed by them, the Members of the said Secret Committee, to carry the same into Execution ; and to all such Orders and Instructions, so transmitted, the several Governments and Presidencies in India are hereby required to pay the same Obedience as if such Orders and Directions had been issued and transmitted by the Court of Directors of the said United Company.

Functions  
of Secret  
Committee

17. Provided also, and be it further enacted and declared by the Authority aforesaid, that nothing in this Act contained shall extend to give unto the said Board the Power of nominating or appointing any of the Servants of the said United Company ; any Thing herein contained to the contrary notwithstanding.

Patronage  
denied to  
Board

18. And be it further enacted, that as soon as the Office of any one of the Counsellors of the Presidency of Fort William in Bengal (other than the Commander in Chief) shall become vacant by Death. Removal, or Resignation, the Vacancy so happening shall not be supplied by the said Court of Directors, but the said Supreme Government shall from thenceforward consist of a Governor General and three Supreme Counsellors only ; and that the Commander in Chief of the Company's Forces in India for the Time being, shall have Voice and Precedence in Council next after the said Governor General ; any Thing in any former Act of Parliament contained to the contrary notwithstanding.

Provision for  
filling up  
vacancies  
in India

19. And be it further enacted, that the Govern-

Provision regarding Madras and Bombay  
 ment of the several Presidencies and Settlements of Fort Saint George and Bombay shall, after the Commencement of this Act, consist of a Governor or President, and three Counsellors only, of whom the Commander in Chief in the said several Settlements for the Time being shall be one, having the like Precedence in Council as in the Presidency of Fort William in Bengal, unless the Commander in Chief of the Company's Forces in India shall happen to be present in either of the said Settlements; and in such Case the said Commander in Chief shall be one of the said Counsellors, instead of the Commander in Chief of such Settlement; and that the said Commander in Chief of such Settlement shall during such Time have only a Seat but no Voice in the said Council.

Directors to appoint Governors and Counsellors for Madras and Bombay  
 20. And be it further enacted, that the Court of Directors of the said United Company shall, within the Space of one Calendar Month next after the passing of this Act, nominate and appoint, from amongst the Servants of the said Company in India, or any other Persons, a fit and proper Person to be the Governor of the said Presidency or Settlement of Fort Saint George, and two other fit and proper Persons from amongst the said Servants in India, who together with the Commander-in-Chief at Fort Saint George for the Time being, shall be the Council of the same Presidency or Settlement; and that the said Court of Directors shall also, in like manner, and within the Time aforesaid, nominate and appoint fit and proper Persons to be the Governor and Council of the said Presidency or Settlement of Bombay, under the same Restrictions as are herein-before provided in respect to the Governor or President and Council of Fort St. George.

Casting vote of Governor in Madras and Bombay  
 21. And be it further enacted, that in case the members present at any of the Boards of Councils of Fort William, Fort Saint George, or Bombay, shall at any Time be equally divided in Opinion in respect to any Matter depending before them, then, and in every such Case, the said Governor General or the

Governor or President, as the Case may be, shall have two Voices, or the casting Vote.

22. And be it further enacted, that it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Writing or Instrument under his or their Sign Manual, countersigned by the Secretary of State, or for the Court of Directors of the said United Company for the Time being, by Writing under their Hands, to remove or recall the present or any future Governor General of Fort William in Bengal, or any of the Members of the Council of Fort William aforesaid, or any of the Governors or Presidents, and Members of the Councils, of the Presidencies or Settlements of Fort St. George and Bombay, or of any other British Settlements in India, or any other Person or Persons holding any Office, Employment, or Commission, Civil or Military, under the said United Company at India, for the Time being; and to vacate and make void all and every or any Appointment or Appointments of any Person or Persons to any of the Offices or Places aforesaid; and that all and every the powers and Authorities of the respective Persons so removed or recalled, or whose Appointment shall be so vacated, shall cease or determine at or from such respective Time or Times as in the said Writing or Writings shall be expressed and directed: Provided always, that a Duplicate or Copy of every such Writing or Instrument, under His Majesty's Sign Manual, attested by the said Secretary of State for the Time being, shall, within eight days after the same shall be signed by His Majesty, his Heirs or Successors, be transmitted or delivered, by the said Secretary of State, unto the Chairman or Deputy Chairman for the Time being of the said United Company, to the Intent that the Court of Directors of the said Company, may be apprized thereof.

Right of King and Directors to recall Governor General, Governors, and other servants of the Company

23. And be it further enacted, that whenever any Vacancy or Vacancies of the Office of Governor General or President, or of any Member of the Council, shall happen in any of the Presidencies aforesaid, either by Death, Resignation, or Recall, as aforesaid, then

Court of Directors to fill up vacancies in India

and in such Case the Court of Directors of the said United Company shall proceed to nominate and appoint a fit Person or Persons to supply such Vacancy or Vacancies from amongst their covenanted Servants in India, except to the Office of Governor General, or the Office of Governor or President of Fort Saint George or Bombay, or of any Commander in Chief, to which several Offices the said Court of Directors shall be at Liberty, if they shall think fit, to nominate and appoint any other Person or Persons respectively.

24. Provided always, and be it further enacted, that the said Commanders in Chief, at each of the said Presidencies respectively, shall in no Case succeed to the Office of Governor General or President of Fort William, Fort Saint George, or of Bombay, unless thereunto specially appointed by the Court of Directors of the said United Company; but that in case of the Vacancy of the said Offices of Governor General or President respectively, when no Person shall be specially appointed to succeed thereunto, the Counsellor next in Rank to such Commander in Chief shall succeed to such Office, and hold the same, until some other Person shall be appointed thereunto by the said Court of Directors.

25. Provided always, and be it further enacted, that when and so often as the Court of Directors shall not, within the Space of two calendar Months, to be computed from the Day whereon the Notification of the Vacancy shall have been received by the said Court of Directors, proceed to supply the same, then and in any such Case, and so often as the same shall happen, it shall be lawful for His Majesty, his Heirs and Successors, to constitute and appoint by writing, under his or their Royal Sign Manual (under the same Restrictions and Regulations as are herein-before provided, with respect to the Nominations and Appointments made by the said Court of Directors), such Person or Persons as His Majesty, his Heirs and Successors, shall think proper to succeed to and supply the respective Office or Place, Offices or Places, so vacant, or from which any Person or Persons shall be

Arrange-  
ment for  
succession

King's right  
to fill up  
vacancies  
in India

so recalled or removed, or whose Appointment or Appointments shall have been vacated and made void as aforesaid; and that every Person or Persons, so constituted and appointed shall have and be invested with the same Powers, Privileges, and Authorities, as if he or they had been nominated and appointed by the said Court of Directors, and shall be subjected to Recall only by the King's Majesty, his Heirs or Successors; any thing herein contained to the contrary notwithstanding.

26. And be it further enacted, by the Authority aforesaid, that it shall and may be lawful to and for the Court of Directors of the said United Company, if they shall so think fit, subject to the like Limitations and Restrictions as are herein-before enacted respecting the persons qualified to be appointed Members of the Government of the respective Settlements of the said United Company at Fort William, Fort Saint George, and Bombay, to appoint from Time to Time, fit and proper Persons to succeed, in case of Vacancy, to the several Offices of Governor General or President of Fort Saint George or Bombay, or Commander-in-Chief of the said Company's Forces at any of the said Settlements, or Member of any of the said Councils; and such Appointments respectively at their Pleasure again to revoke; but that no Person so appointed to succeed to any of the said Offices, in case of Vacancy, shall be entitled to any Salary, Advantage, or Allowance whatsoever, by reason of such Appointment, until such Persons respectively shall take upon themselves the Offices to which they shall so respectively have been appointed.

Right of  
Directors to  
nominate  
successors  
to posts  
in India

27. And be it further enacted by the Authority aforesaid, That when and so often as the Number of Members of any of the said Councils of Fort William, Fort Saint George, or Bombay, shall by Death, or Absence, by reason of Sickness or otherwise, for fourteen Days be reduced to two, including the Governor-General or President of such Council, the Person who shall stand Senior in such provisional Appointment as is herein-before mentioned, or in case

there shall be no such Appointment, then the senior Civil Servant of the said Company upon the Spot, shall be called to such Council, and shall have a Voice therein in like Manner as if he had been appointed thereunto by the Court of Directors of the said Company, and shall hold such Office in case the Vacancy shall have happened by Death, until a Successor thereunto shall be appointed by the said Court of Directors ; or if such Vacancy shall have happened by Absence or Sickness, until the Return or Recovery of such sick or absent Member ; and that all Persons so exercising the Office of a Counsellor at any of the said Presidencies shall be entitled, for the Time he shall so hold the same, to the like Advantages as if he had been thereunto permanently appointed by the said Court of Directors.

\* \* \* \*

29. And be it further enacted, that no Order or Resolution of any General Court of the Proprietors of the said United Company shall be available to revoke or rescind, or in any respect to affect, any Act, Order, Resolution, Matter, or Proceeding, of the said Court of Directors, by this Act directed or authorized to be made or done by the said Court, after the same shall have been approved by the said Board, in the Manner herein-before directed ; any Law or Usage to the contrary notwithstanding.

30. And be it further enacted, that so much and such Parts of an Act, made in the twenty-first Year of the Reign of his present Majesty, as directs the Court of Directors of the said United Company to deliver to the Commissioners of the Treasury, or to the High Treasurer for the Time being, or to one of His Majesty's Principal Secretaries of State, Copies of any Letters or Orders relating to the Management of the Revenue, or the Civil and Military Affairs of the said Company ; and also all such powers and Authorities given to or vested in the Proprietors and Directors of the said United Company, or in any General or Special Court thereof respectively, in and by any Act of Parliament or Charter, or are

contrary or repugnant to this Act, or any Thing herein contained, shall be, and the same are hereby, repealed; any Thing contained in any Act or Charter, or any Custom or Usage to the contrary notwithstanding.

31. And be it further enacted, that the Governor General and Council of Fort William aforesaid shall have Power and Authority to superintend, controul, and direct the several Presidencies and Governments now or hereafter to be erected or established in the East Indies by the said United Company, in all such Points as relate to any Transactions with the Country Powers, or to War or Peace, or to the Application of the Revenues or Forces of such Presidencies and Settlements in Time of War, or any such other Points as shall, from Time to Time, be specially referred by the Court of Directors of the said Company to their Superintendence and Controul.

Control of  
Bengal over  
other  
Presidencies

32. And, in order to prevent the Embarrassment and Difficulty which may arise from any Question, whether the Orders or Instructions of the Governor General and Council of Fort William relate to other Points than those aforesaid, be it further enacted, that notwithstanding any Doubt which may be entertained by the said Presidencies or Settlements to whom such Orders or Instructions shall be given, respecting the Power of the Governor General and Council to give such Orders, yet the said Presidencies or Settlements shall be bound to obey such Orders and Directions of the said Governor General and Council in all Cases whatever, except only where they shall have received positive Orders and Instructions from the said Court of Directors, or from the Secret Committee of the said Court of Directors, repugnant to the Orders and Instructions of the said Governor General and Council, and not known to the said Governor General and Council at the Time of dispatching their Orders and Instructions as aforesaid; and the said Governor General and Council shall, at the Time of transmitting all such Orders and Instruc-

Provision  
regarding  
orders sent  
from Bengal  
to other  
Presidencies

tions, transmit therewith the Dates of, and the Times of receiving, the last Dispatches, Orders and Instructions which they have received from the Court of Directors, or from the Secret Committee of the said Court of Directors, or any of the Points contained therein : And the said Presidencies and Governments, in all Cases where they have received any Orders from the said Court of Directors, or from the Secret Committee of the said Court of Directors, as aforesaid, which they shall deem repugnant to the Orders of the said Governor General and Council at Fort William, and which were not known to the said Governor General and Council at the Time of dispatching their Orders and Instructions as aforesaid, shall forthwith transmit Copies of the same, together with an Account of all Resolutions or Orders made by them in consequence thereof, to the Governor General and Council of Fort William, who shall, after the Receipt of the same, dispatch such further Orders and Instructions to the said Presidencies and Settlements as they may judge necessary thereupon.

33. And be it further enacted, that the Governor General and Council of Fort William aforesaid, and the several Presidents and Counsellors of Fort Saint George and Bombay, shall, at their several and respective Boards and Councils, proceed, in the first Place, to the Consideration of such Questions and Business as shall be proposed by the said Governor General or Presidents respectively ; and when and so often as any Matter or Question shall be propounded at any of the said Boards or Councils, by any of the Counsellors thereof, it shall be competent to the said Governor General and Presidents respectively, to postpone or adjourn the Discussion of the Matter or Question so propounded to a future Day : Provided always, that no such Adjournment shall exceed forty-eight Hours, nor shall the Matter or Question so proposed be adjourned more than twice, without the Consent of the Counsellor who originally proposed the same.

Procedure  
to be  
adopted by  
Councils  
in India

34. And whereas, to pursue Schemes of Conquest and Extension of Dominion in India, are Measures re-



pugnant to the Wish, the Honour, and Policy of the Nation; be it therefore further enacted by the Authority aforesaid, that it shall not be lawful for the Governor General and Council of Fort William aforesaid, without the express Command and Authority of the said Court of Directors, or of the Secret Committee of the said Court of Directors, in any Case, except where Hostilities have actually been commenced, or Preparations actually made for the Commencement of Hostilities, against the British Nation in India, or against some of the Princes or States dependent thereon, or whose Territories the said United Company shall be at such Time engaged by any subsisting Treaty to defend or guaranty, either to declare War or commence Hostilities, or enter into any Treaty for making War, against any of the Country Princes or States in India, or any Treaty for guarantying the Possessions of any Country Princes or States; and that in such Case it shall not be lawful for the said Governor General and Council to declare War or commence Hostilities, or enter into Treaty for making War, against any other Prince or State than such as shall be actually committing Hostilities, or making Preparations as aforesaid, or to make such Treaty for guarantying the Possessions of any Prince or State, but upon the Consideration of such Prince or State actually engaging to assist the Company against such Hostilities commenced, or Preparations made as aforesaid; and in all Cases where Hostilities shall be commenced, or Treaty made, the said Governor General and Council shall, by the most expeditious Means they can devise, communicate the same unto the said Court of Directors, together with a full State of the Information and Intelligence upon which they shall have commenced such Hostilities, or made such Treaties, and their Motives and Reasons for the same at large.

Restrictions  
regarding  
declaration  
of war by  
Bengal

35. And be it further enacted, that it shall not be lawful for the Governors or Presidents, and Counsellors, of Fort Saint George and Bombay, or of any other subordinate Settlement respectively, to make or

**Restrictions regarding declaration of war by subordinate Presidencies** issue any Order for commencing Hostilities, or levying War, or to negotiate or conclude any Treaty of Peace, or other Treaty, with any Indian Prince or State (except in Cases of sudden Emergency or imminent Danger, when it shall appear Dangerous to postpone such Hostilities or Treaty), unless in pursuance of express Orders from the said Governor General and Council of Fort William aforesaid, or from the said Court of Directors, or from the Secret Committee of the said Court of Directors; and every such Treaty shall, if possible, contain a Clause for subjecting the same to the Ratification or Rejection of the Governor General and Council of Fort William aforesaid: And the said Presidents and Counsellors of the said Presidencies and Settlements of Fort Saint George and Bombay, or other subordinate Settlement, are hereby required to yield due Obedience to all such Orders as they shall from Time to Time respectively receive from the said Governor General and Council of Fort William aforesaid, concerning the Premises.

36. And be it further enacted, that all and singular the said Presidents and Counsellors who shall wilfully refuse to pay due Obedience to such Orders and Instructions as they shall receive from the said Governor General and Council of Fort William as aforesaid, shall be liable to be suspended from the Exercise of their respective Offices or Powers, by Order of the said Governor General and Council of Fort William; and all and every of them are hereby further required, constantly and diligently to transmit to the said Governor General and Council of Fort William aforesaid, true and exact Copies of all Orders, Resolutions, and Acts in Council, of their respective Governments, presidencies, and Councils, and also Advice and Intelligence of all Transactions and Matters which shall come to their Knowledge, material to be communicated to the Governor General and Council of Fort William aforesaid, or which the said Governor General and Council shall from Time to Time require.

**Penalty for disobedience of orders from Bengal by subordinate Presidencies**

44. And be it further enacted, that all His Majesty's Subjects, as well Servants of the said United Company as others, shall be, and are hereby declared to be, amenable to all Courts of Justice (both in India and Great Britain) of competent Jurisdiction to try Offences committed in India, for all Acts, Injuries, Wrongs, Oppressions, Trespasses, Misdemeanors, Crimes, and Offences whatsoever, by them or any of them done, or to be done or committed, in any of the Lands or Territories of any Native Prince or State, or against their Persons or Properties, or the Persons or Properties of any of their Subjects or People, in the same Manner as if the same had been done or committed within the Territories directly subject to and under the British Government in India.

British subjects amenable to justice for acts done in India

45. And be it further enacted, that the demanding or receiving of any Sum of Money, or other valuable Thing, as a Gift or Present, or under Colour thereof, whether it be for the Use of the Party receiving the same, or for, or pretended to be for, the Use of the said Company, or of any other Person whomsoever, by any British Subject holding or exercising any Office or Employment under His Majesty, or the said United Company in the East Indies, shall be deemed and taken to be Extortion, and shall be proceeded against and published as such, under and by virtue of this Act; and the Offender shall also forfeit to the King's Majesty, his Heirs and Successors, the whole Gift or Present so received, or the full Value thereof.

Receiving of presents disallowed

46. Provided always, and be it further enacted, that the Court of Jurisdiction before whom every such offence shall be tried, shall have full Power and Authority to direct the said Present or Gift, or the value thereof, to be restored to the party who gave the same, or to order the whole, or any part thereof, or of any fine which the Court shall set on the offender, to be paid or given to the prosecutor or Informer, as such Court in its Discretion shall think fit.

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48. Provided always, and be it enacted, That nothing herein contained shall extend, or be construed Exception to extend, to prohibit or prevent any Person exercising the Profession of Counsellor at Law, Physician, or Surgeon, or any Chaplain, from accepting, taking, or receiving Fees, Gratuities, or Rewards, (*bona fide*), in the way of his Profession only.

\* \* \* \*

51. And be it further enacted, That after Sentence or Judgment of any Court having competent Jurisdiction, whether in Great Britain or in India, against Company's any of the said United Company's Servants, Civil or servants, Military, for any Debt or Penalty due or belonging dismissed by any to the said United Company, or for any Extortion or competent other Misdemeanor, it shall not be lawful for the said Court, United Company, upon any Pretence whatsoever, not to be to release or compound such Sentence or Judgment, or restored to restore any Servant or Servants of the said Company, who shall have been removed or dismissed from his or their Office or Employment, for or on account of Misbehaviour, by the Sentence of any of the said Courts.

\* \* \* \*

53. And be it further enacted, That it shall and may be lawful for the Governor General of Fort Governor William aforesaid for the Time being, to issue his General Warrant under his Hand and Seal, directed to such may arrest persons Police Officers and other Persons as he shall think fit, suspected for securing and detaining in Custody any Person or of plotting Persons suspected of carrying on, mediately or immediately, any illicit Correspondence, dangerous to the against peace or Peace or Safety of the Settlement, or of the British safety of Possessions in India, with any of the Princes, Rajahs, the country Zemindars, or other Person or Persons whomsoever having Authority in India, or with the Commanders, Governors, or Presidents of any Factories established in the East Indies by any European Power, contrary to the Rules and Orders of the said Company, or of Governor General and Council of Fort William afore-

said ; and if, upon Examination, taken upon Oath, in Writing, of any Person or Persons (other than the Person so secured and detained) before the Governor General and Council of Fort William aforesaid, there shall appear reasonable Grounds for the Charge, the said Governor General shall be, and is hereby authorized and empowered to commit such Person or Persons above described to safe Custody, and shall within a reasonable Time, not exceeding five Days, cause to be delivered to him or them the Charge or Accusation on which he has or they have been committed ; and the party so confined shall be permitted to deliver in his Defence in Writing, together with a List of such Witnesses, as he shall desire to be examined in Support of his Defence, who shall be examined accordingly in his Presence, and their Examinations taken down in Writing ;

and if, notwithstanding such Defence, there shall appear to the said Governor General and Council reasonable Grounds for the former Proceeding, and for continuing the Confinement, the Party shall remain in Custody until he or they shall be brought to Trial in India, or sent to England for that Purpose ; and that all such Examinations and Proceedings shall be transmitted to the said Court of Directors by the first Dispatches ; and in case such Person or Persons are to be sent to England, the said Governor General shall, and he is hereby required to cause such Person or Persons to be sent by the first convenient Opportunity, unless such Person or Persons shall be disabled by Illness from undertaking the Voyage.

54. And be it further enacted, That the several Presidencies and Governments of Fort Saint George and Bombay, shall have the like Powers, and subject to the same Regulations and Restrictions, to secure and detain Persons suspected of any such illicit Correspondence as aforesaid, within their respective Presidencies and Settlements as are hereby given to the said Governor General and Council of Fort William.

Madras and  
Bombay  
Governments  
to have  
similar  
powers

## 25. PITT'S SPEECH ON THE INDIA BILL, 1784. (House of Commons, July 6, 1784).

Importance  
of India

In pursuance of the notice he had given, Mr. CHANCELLOR PITT rose to open his new system for the Government of India. No one, he said, could be more deeply impressed than he was with the importance of the subject on which he was then going to enter : in whatever point of view he considered it, he felt that no subject could possibly be more interesting. In it were involved the prosperity and strength of this country ; the happiness of the natives of those valuable territories in India which belonged to England ; and finally the constitution of England itself. India had at all times been of great consequence to this country, from the resources of opulence and strength it afforded : and that consequence had, of course, increased in proportion to the losses sustained by the dismemberment of other great possessions, by which losses, the limits of the empire being more contracted, the remaining territories became more valuable. He was aware that nothing could be more difficult than to digest a plan, which should at once confirm and enlarge the advantages derived to this country from its connexion with India, to render that connexion a blessing to the native Indians, and at the same time preserve inviolate the essence and spirit of our own constitution from the injuries to which this connexion might eventually expose it. Gentlemen would recollect with a degree of horror, to what dangers that happy constitution was exposed last year, when a bill

Fox's India  
Bill

was introduced into Parliament which would have established a system dangerous to everything that Englishmen held dear ; they would recollect, that the liberties of this country had nearly suffered shipwreck<sup>1</sup> : the danger, however, was happily over ; and the legislature had now an opportunity to consult about the means the most likely to reconcile and secure the interests of the people of this country, of the people of India, and of the British constitution, as far as it might be affected by the connexion with India. To

<sup>1</sup> The reference is to Fox's India Bills.

his lot fell the arduous task of proposing to the House a plan which should answer all these great purposes. He was aware that no plan could be devised, to which some objections would not lie : he was aware that it was not possible to devise a plan that should be free from imperfections ; he should therefore console himself if he should be able to suggest the means of doing the most good to India, and to the East India Company, with the least injury to our constitution. In the arrangements that he should propose, it would be impossible to proceed, without giving to some body of men an accession of power ; but it was his duty to vest it where he should have reason to think it would be least liable to abuse, at the same time that it should be sufficient, and not more than sufficient, for all the purposes for which it should be given ; sufficient to secure to this country the wealth arising from the commerce of the Company ; to the inhabitants of Hindoostan peace and tranquillity ; and to enforce obedience on the part of the servants of the Company, to the orders that should be sent to them from home. In framing such a system, he thought it his duty never to lose sight of this principle—that though no charter could or ought to supersede state necessity, still nothing but absolute necessity could justify a departure from charters. He admitted that charters ought not to stand in the way of the general good and safety of the country ; he admitted that no charter ought to be suffered to stand in the way of a reform, on which the being or welfare of the country depended, but at the same time he contended, that a charter ought never to be invaded, except when the public safety called for its alteration : charters were sacred things. On them depended the property, franchises, and every thing that was dear to Englishmen ; and wantonly, to invade them, would be to unhinge the constitution, and throw the state into anarchy and confusion.

Difficulties of  
legislating  
on India

Importance  
of Charters

With respect to the India Company, its affairs were not in a state that called for a revocation of the charter ; the necessity which would justify a revocation did not exist in this case ; and he felt no small

No neces-  
sity of  
revoking  
Charter

degree of satisfaction in the assurance, that at the moment when he had to propose such measures for the government of India, and the conduct of the affairs of the East India Company, as to his judgment appeared most applicable, there no longer existed any danger of the best and most sacred rights of Englishmen being made a sacrifice to the ambitious projects of those who, under the necessity that actually existed had taken the desperate resolution, that nothing short of measures of the most decisive and extreme nature, and measures far exceeding the necessity of the case, could be effectual. He thanked God so great a sacrifice had been escaped; and he trusted, that the sense plainly and incontrovertibly declared to be entertained upon the subject by the majority of the people of England, would prove to be the sense of the majority of that House; and that they would join with him in opinion, that although it must on all hands be admitted that there did exist a great and urgent necessity for the interference of the legislature with regard to the East India Company and the future government of India, yet that neither state policy nor common prudence called for the legislature's proceeding beyond the limit of the existing necessity, much less of going the length either of destroying the rights of any individuals or bodies of men, established upon the most sacred of all foundations, the express words of solemn charters recognized and confirmed by repeated acts of Parliament, or of directly changing the constitution of the country, and departing from those known principles of government which the wisdom of our ancestors had provided, and which had proved for ages the uninterrupted source of security to the liberties of Englishmen. It was, he said, to be acknowledged on all hands, that no rights of any body of men, however confessed to be rights of the most sacred sort, could supersede state necessity. To that and that alone, they must give way; but then it ought ever to be a rule of conduct with those to whose lot it fell to act under such a necessity, to take care that they do not exceed it. Nothing but such a necessity

State  
necessity  
vs. private  
rights



could warrant any government in proceeding to do what must be an unwelcome task for all who had any concern in its execution ; but when they found themselves obliged to discharge a duty of that irksome nature, they ought to proceed warily, and with all possible tenderness and regard for those with whose rights they felt themselves obliged to interfere ; and to be assured, that in endeavouring to do all that their duty required, they did not unnecessarily tear up by the roots and annihilate those rights that were of essential consideration, and ought not to have been touched, because the exigency of the case did not actually require it. And though on a former occasion he had been derided, when he comforted himself with the idea, that, in every departure he should propose from the charter, he should have the consent and concurrence of the Company, he still continued to find great consolation in the reflection, that he did no violence to the Company ; for no violence could be said to be done by regulations, to every one of which the Company most cheerfully consented.

He did not find it necessary to create any system absolutely new for the government of our territories in India ; he should rather endeavour to improve on the system by which those territories were governed at present. The great considerations to be looked to in the regulation of the government of India were threefold—the commerce of this country with that, and consequently the resources we derived from it ; the interests of the inhabitants there ; and the connexion that the management of both had with our own constitution. Great inconvenience must, under the best possible devised form of government, necessarily arise from the circumstances of any country deriving a considerable part of her resources from a dependency at so great a distance ; and this must also add to the extreme difficulty of governing India from home, because that distance must necessarily prevent the government at home, and those who filled the executive offices in India, from acting with equal views. For this

Principles  
on which  
legislation  
on India  
should  
be based

reason he must repeat what he had before taken the liberty to state, when the subject had been under the consideration of the last Parliament, that as no plan of government for India that human wisdom could suggest, was capable of perfection, so he was far from presuming to think that the plan he should propose would not occasion much difference of opinion, and be liable to a variety of objections. He could only with great humility submit that plan to the Judgment of Parliament, which from the maturest consideration, he had been able to select as the most practicable and the most consonant to the present constitution ; conscious at the same time, that it was impossible for him with so many different subjects to attend to, to have found leisure to do justice to a matter of sufficient importance to engross the attention of any man whose mind had been vacant and unoccupied by other objects. To proceed however to the business to be stated, he observed, that it could not be denied, that in every project of government of India there must be an accession of influence somewhere, which it became that House and the people in general always to regard with extreme jealousy. This influence, for obvious reasons, should not be left at home, but might with greater safety be trusted abroad in India, where the executive power must be lodged ; as every man must see the necessity of having a government active on the spot, yet not independent of this country, but so constituted as to secure obedience to the system of measures dictated from home, while at the same time it was capable of preventing extortion in India, and frustrating the improper views of ambition and despotism. The channel of commerce, he said, must be our guide, as to our future expectations from our connexion with India, since we ought to look to the management of our manufactures there, which must chiefly depend on the establishment of the happiness of the inhabitants, and their being secured in a state of peace and tranquillity. In order to effect this, he declared it would be necessary to give the government abroad a certain degree of power, subject only to the

Necessity of  
having an  
'active  
government'  
in India,  
which  
must  
not be  
independent  
of control  
from  
England

control of a board, to be appointed at home, of the nature that he had mentioned, when he had proposed a Bill upon the same subject to the last Parliament. He observed, that in the present consideration there were mixed interests to be regarded as well as mixed objects. Government and commerce were the two great objects to be looked to, while the interest of the East India Company, and the interest of the country, called for their most serious attention. The commerce of the Company exclusively belonged to them; nor was it till the territorial acquisitions of the Company became considerable, that the public claimed any participation in the advantages arising from the resources of those acquisitions, in the obtaining of which they had borne so large a share. The commerce to and from India, therefore, he meant to leave, where it ought to be left, in the management of the Company.

Commerce  
to be left  
to Company

It had, he remarked, been ever held, that commercial companies could not govern empires; but that was a matter of speculation, which general experience proved to be not true in practice, however universally admitted in theory. The East India Company had conducted its commerce, and governed a vast empire for years, and it was to be remembered that the East India Company was no new establishment; it rested on charters and acts of Parliament; those charters ought undoubtedly to be regarded, and as far as possible, the rights exercised and enjoyed under them ought to be held sacred. But as he had before observed, there were no rights, that by accident or time became fatal to the interests of the public or to the safety of the state, which must not be touched. The matter was, how to connect the constitution of the Company with the national interests: from that regard and attention to chartered rights which he ever should profess, and which every man ought to practise, he had been led rather to consider, whether it was not possible to model the old constitution of the Company, so as to make it answer every view of the state, and every interest of the public, rather than to make a new one; not thinking it necessary to confiscate,

Can commercial  
Companies  
govern  
empires?

Adjustment  
necessary,  
not  
destruction

annihilate, and destroy, where the purpose could be attained without proceeding to any such violent lengths.

Division of powers between Company and Government  
 In the measures to be taken for the future government of India, if they had the Company's concurrence, it would surely be admitted that they took the safest line; that they had pursued the wisest course; and the measures he should propose, were such as the Company agreed to. The control he had mentioned ought undoubtedly to remain where the constitution had placed all power, in the executive government of the country. The management of the commerce he meant to leave with the Company. The patronage should be separate from the executive government, but be it given where it would, he should propose regulations that would essentially curtail and diminish it, so as to render it as little dangerous as possible. The patronage, however, he would trust with no political set of men whatever. Let it be in India, it would be free from corruption then; and when exercised under the restrictions and limitations he should propose, could, he flattered himself, be attended with no bad consequences.

Board of Control  
 He enlarged upon these points considerably; and then said, from what he had stated, the House would doubtless observe, that the Bill he meant to move for leave to bring in, was not different from former Bills that he had stated to the House. The great point of it, as far as he had opened it, was the appointment of a separate department of Board of Control, to whom all dispatches should be transmitted, and who should be responsible for what they did, and for what they did not do; who should blink nothing, who should be obliged to act upon every question that came before them, who should not shew any indulgence or partiality, or be guilty of procrastination; who should not have the plea of other business, or in fine, on any pretence, or in any other way whatever, put off or delay the duties of their offices. This institution, though certainly new, was not charged with new

during; because the same powers of control had been given to the Secretaries of State by various acts of Parliament, but unfortunately they had never been exercised, having been suffered to remain dormant. He wished, therefore, to put it out of the power of that degree of laziness natural to office, any longer to defeat the public interest, by the institution of a board necessarily active and efficient. He was aware that many persons, who in general disliked, as much as he had done, the violence of the measures proposed in another Bill, approved the idea of making the board of commissioners, to be instituted under the authority of that Bill, permanent. He was not of this opinion; sure he was, that the permanency of such a board as that Bill proposed to institute, would have added to the mischiefs of it. Such a board would have been in itself a deviation from the principles of the constitution, and its permanency would have involved it in contradictions to the executive government that must have been attended with great public inconvenience. An institution to control the government of India must be either totally independent of the executive government of this country, or it must be subordinate to it. Ought the administration of the day to have no connexion with what was going on? Let it be remembered that a permanent board might be hostile to those who held the government at the time; a view of it, which, he trusted, would sufficiently prove, that an actual independent permanency in any such board would be an evil. The existing government ought to be, to a degree, permanent; but the Indian department must not be independent of that: he meant, therefore, to give it a ground of dependence, upon which all the various departments had a natural and legitimate dependency; viz. upon the executive government. Every government that had no other object than the public good, that was conscious of acting upon no other principles than such as were perfectly constitutional, that was swayed by no motives of a personal, an interested, or an ambitious nature, but which possessed a sufficient share of the confidence

Should  
Board be  
permanent?

Criticism  
of Board  
proposed in  
Fox's Bill

of the sovereign, of Parliament, and of the people at large, would, from its conduct, be permanent; and the Indian government would be so of course. Having said this, he animadverted on the danger of once departing from the constitution, by appointing such a commission as the Bill<sup>1</sup> that had passed that House, but which had been rejected by the Lords in the last Parliament, authorized. He remarked, if the practice once obtained, there was no saying to what extent it might be carried, or how often the precedent might be multiplied: admitting it to pass in the instance of the late Bill, they might have proceeded to separate and tear away all the departments from the crown, and put them one after another into so many Parliamentary commissions.

With regard to the objections that had been stated, and the reasons that had been urged to prove that the Company's directors ought not to be excluded from an insight of the papers of the commissioners, he was willing so far to give way to the arguments of that nature, as to permit the court of directors to see the papers of the commissioners; but they were to have no power of objecting: the decision of the commissioners must be final and binding upon the directors. He meant also to invest the commissioners with a power to originate measures, as well as to revise, correct, alter, and control those of the Company: but with regard to such measures as the Commissioners originated, the Company were to be obliged to carry them into execution. This, he observed, took nothing from the Company; since, in fact, it was nothing more than the power to put a negative on their measures, and the power of altering them, acting in another way. With respect to the appointment of the commissioners, he said, it was meant to be the same as that of persons holding great offices, viz., at the nomination of the crown. It was intended that the board should consist of none but privy counsellors; but the board should create no increase of officers, nor

Appoint-  
ment of  
Board of  
Control

<sup>1</sup> Fox's India Bill.

impose any new burthens, since he trusted there could be found persons enough who held offices of large emolument, but no great employment, whose leisure would amply allow of their undertaking the duty in question. And this circumstance, he observed, would have a good effect for the future, in rendering it necessary for ministers, when, by way of providing for their families, they appointed to offices hitherto considered as sinecures, to have some other consideration of the ability of the person about to be appointed to fill it ; a consideration that could not but occasion the description of offices to which he was alluding, to be well filled for the future. The principal powers of this board, he recapitulated, would consist in directing what political objects the Company's servants were to pursue, and in recalling such as did not pay obedience to such directions, or be able to give very satisfactory reasons to shew that circumstances rendered disobedience a virtue. The board would be strictly a board of control : it would have no power to appoint, nor any patronage ; consequently it could have no motive to deviate from its duty.

Powers of  
Board of  
Control

Thus much, the House would see, related solely to the government at home. With regard to the government abroad the first and leading ideas would be to limit the subsisting patronage, and to produce a unity of system, by investing the supreme government to be seated in Bengal, with an effectual control over every other presidency, and by investing that supreme government with executive power, and with the disposition of offices in India ; but to make it a matter less invidious, and to prevent the possibility of abuse, gradation and succession should be established as the invariable rule, except in very extraordinary cases : with a view to which, there must be lodged in the supreme government, as in every other executive power, a discretion, which every man must see was actually necessary to be vested in an executive power, acting at such an extreme distance from the seat of the supreme government of all, but which was nevertheless to be subject to the control of the board of superintendency

Powers of  
Government  
of Bengal

to be established here at home, whose orders in this, as in every other case, the government of India must obey. Though Bengal was designed to be the supreme government, it was not to be the source of influence : that being as much as possible guarded against by the regulations designed to make a part of the Bill. The officers of the government of Bengal were intended to be left to the nomination of the court of directors, subject to the negative of the crown ; and the court of directors were to have the nomination of the officers of all the subordinate governments, excepting only of the commander-in-chief, who, for various reasons, would remain to be appointed by the crown. He said, it might possibly be argued, that if the crown nominated the commander-in-chief, and had a negative upon the rest of the appointments, all the patronage remained in the hands of government at home. This, however, was far from being the case ; the patronage of great appointments not being the sort of patronage for the public to entertain a jealousy about, and the other patronage being diffused and placed in Bengal, the influence from it was considerably weakened and diminished ; add to this, all officers going by gradation and succession, would be a forcible check upon the patronage, and tend greatly to its reduction.

Object of government in India Having discussed this matter very fully, Mr. PITT proceeded to state, that much would depend on the manner of administering the government in India, and that his endeavours should be directed to enforce clear and simple principles, as those from which alone a good government could arise. The first and principal object would be to take care to prevent the government from being ambitious and bent on conquest. Propensities of that nature had already involved India in great expenses, and cost much bloodshed. These, therefore, ought most studiously to be avoided. Commerce was our object, and with a view to its extension, a pacific system should prevail, and a system of defence and conciliation. The government there ought, therefore, in an especial manner to avoid wars, or entering into alliances likely to create wars. At the same time that

Alliances and wars



he said this, he did not mean to carry the idea so far as to suggest, that the British government in India was not to pay a due regard to self-defence, to guard against sudden hostilities from the neighbouring powers, and, whenever there was reason to expect an attack, to be in a state of preparation. This was undoubtedly and indispensably necessary; but whenever such circumstances occurred, the executive power in India was not to content itself with acting there, as the nature of the case might require; it was also to send immediate advice home of what had happened, what measures had been taken in consequence of it, and of what farther measures were intended to be pursued. He mentioned also the institution of a tribunal to take cognizance of such matters, and state how far such a tribunal should be empowered to act without instructions from home. He next said, that the situation of the Indian princes, in connexion with our government, and of the number of individuals living immediately under our government, were objects that ought to be the subject of an inquiry. The debts due from one Indian prince to another, over whom we had any influence, such as the claims of the NABOB OF ARCOOT upon the RAJA OF TANJORE, ought undoubtedly to be settled on a permanent footing: this, and the debts of the natives tributary to us, ought also to be the subjects of inquiry. Another object of investigation, and an object of considerable delicacy, was the pretensions and titles of the landholders to the lands at present in their possession: in the adjustment of this particular, much caution must be adopted, and means found that would answer the end of substantial justice, without going the length of rigid right, because he was convinced, and every man at all conversant with Indian affairs must be convinced, that indiscriminate restitution would be as bad as indiscriminate confiscation.

Indian  
Princes.

Zamindars

Another very material regulation, or rather principle of reform, from which solid hopes of providing a surplus adequate to the debt in India might be drawn, was, the retrenchment of our establishments in that country. At present it was a well-known

Retrench-  
ment

fact, that all our establishments there were very considerably overcharged ; at any rate, therefore, there must be no augmentation suffered ; and in order to prevent the possibility of such an improvident measure, a return of all the establishments must be called for. With regard to the means of reducing them, they ought to be laid before Parliament, and submitted to the determination of both Houses. Every intended increase of the establishment ought also to be submitted to Parliament, and the Company to be immediately restrained from sending out any more inferior servants. He stated that it would be necessary, by proper provisos, to compel the execution of these points : and the better to guard against the continuance of that rapacity, plunder, and extortion, which was shocking to the feelings of humanity, and disgraceful to the national character, he proposed to render the Company's servants responsible for what they did in every part of India, and to declare it illegal and punishable, if they, on any pretence whatever, accepted sums of money, or other valuables, from the natives. This would, he hoped, tend effectually to check private corruption. There were, he was aware, a certain species of presents, so much a part of the ceremonies inseparable from the manner of the East, that an attempt to direct that they should not be received, would be utterly impracticable ; but even as much as possible to guard against any bad consequences resulting from the continuance of the practice in question, he meant that the Bill should oblige the Company's servants in India to keep an exact and faithful register of all such presents.

With regard to those of the Company's servants who did not comply with the directions, the Bill would hold out to them, and to such other directions as should, under the sanction and authority of the Bill, be transmitted to them from home, such persons should be considered as guilty of offences punishable in the degrees stated in the Bill, which should contain a special exception of those guilty of disobedience of orders and other crimes, which from their consequences

Control of  
Parliament  
over Com-  
pany's ex-  
penditure

Punishment  
of Com-  
pany's  
servants

being of a most fatal tendency, must be punished with great severity. In respect to this part of his subject, the House, he had no doubt, would go along with him in feeling the necessity, and at the same time the extreme difficulty, of providing a proper tribunal, before which persons charged with offences committed in India should be tried. He owned he had an extreme partiality to the present system of distributing justice in this country, so much so, that he could not bring himself for a moment to think seriously upon the idea of departing from that system, without the utmost reluctance : without mentioning names, however, or referring to recent instances, every man must acknowledge, that at present we had it not in our power to do justice to the delinquents of India, after their return home. The insufficiency of Parliamentary prosecutions was but too obvious ; the necessity for the institution of some other process was, therefore, undeniable. A summary way of proceeding was what had struck him, and, he believed, others who had thought much upon the subject, as most advisable : the danger, however, was the example that must arise from any deviation from the established forms of trials in this country, it being perhaps the first, the dearest, and the most essential consideration in the mind of every Englishman, that he held his property and his person in perfect security, from the wise, moderate, and liberal spirit of our laws. Much was to be said with respect to the case in point : either a new process must be instituted, or offences equally shocking to humanity, opposite to justice, and contrary to every principle of religion and morality, must continue to prevail unchecked, uncontrolled, and unrestrained. The necessity of the case outweighed the risk and the hazard of the innovation, and when it was considered that those who might go to India hereafter, would know the danger of transgressing before they left England, he trusted it would be admitted that the expedient ought to be tried. Should such a law pass, every man who should go to India in future, would, by so doing, consent to stand in the particular predic-

Parliamentary prosecutions not enough

ment in which the particular law placed him ; and in thus agreeing to give up some of the most essential privileges of his country, he would do no more than a very numerous and honourable body of men did daily, without the smallest impeachment of their characters, or the purity of the motives that impelled their conduct.

Composition of Special Court for trial of Company's officers

Mr. PITT suggested loosely what his idea of the summary species of trial he meant to authorize was. He said, there must be an exception to the general rules of law ; the trials must be held by special commission ; the court must not be tied down to strict rules of evidence ; but they must be upon their oaths to give judgment conscientiously, and pronounce such judgment as the common law would warrant, if the evidence would reach it. Much, he was aware, would depend on the constitution of the court. His design, therefore, was, that it should be composed of men of known talents, unimpeached character, and high consequence ; that their impartiality should be farther secured by their election being by ballot ; and that a certain number out of the whole nominated should make a court, in order that there might exist the chance of a choice by ballot. The persons to be balloted for, should be some of them from among the judges, some members of the House of Lords, and some members of that House. Such a mixed assemblage, from the very first characters in the kingdom, would leave no room for suspicion, or possible impeachment of justice ; and in order still more strongly to fortify the subject against injustice, they should not be chosen till the hour of trial, and should then be all sworn. To effect the purposes of the institution of such a tribunal, they should be empowered to take depositions, and receive information, communicated by witnesses who were in India when the delinquent was stated to have committed the offences he might stand charged with ; and farther, they should be judges both of the law and the fact. With regard to the punishments, they should be governed by the punishments the law, as it stood, authorized in case of mis-

Powers of Special Court

demeanor, viz., fine and imprisonment; but the extent of these should rest in the discretion of the court, to apportion according to their opinion of the proved enormity of the crime; and as a further means of rendering such a tribunal awful, and of giving effect to its plans for preventing the perpetration of crimes shocking to humanity, it should be armed with the power of examining the parties charged as delinquents, by interrogatories as to the value of their effects, in order the better to be able to govern the quantum of the fine to be levied in case of conviction; it should also be armed with the power of examining the amount of any man's property on his arrival in England from India; and since purity and abstinence were the objects which every man must desire should characterize the conduct of their countrymen in Asia, the Company should not have it in their power to employ any one of their servants convicted of a misdemeanor while he had been in India, nor should any person be suffered to return to that country after his stay in this beyond a certain limited period . . .

## 26. FOX'S SPEECH ON PITT'S INDIA BILL, 1784.

(House of Commons, July 16, 1784).

To sum up my objections to the first part of the Bill, they are these; it provides for a weak government at home by the division of the power; and it perpetuates the abuses in India, by giving additional authority to the officers abroad. It is unstatesman-like in its principles; for it absurdly gives the power of originating measures to one board, and the nomination of officers for the execution of those measures to another. It increases influence without vesting responsibility; and it operates by dark intrigue, rather than by avowed authority

Summary  
of objec-  
tions

## 27. BURKE'S SPEECH ON THE IMPEACH- MENT OF WARREN HASTINGS.

(February 15-18, 1788).

My Lords, the power which Mr. Hastings is charged with having abused are the powers delegated

Sources of to him by the East India Company. The East India Company's powers : Company itself acts under two sorts of powers, derived

(1) British from two sources. The first source of its power is Charters under a charter which the Crown was authorized by act of Parliament to grant. The next is from

(2) Mughal several grants and charters indeed, as well as that Charters great fundamental charter, which it derived from the

Company's responsibility to England

Emperor of the Moguls, the person with whose dominions they are chiefly conversant ; particularly the great charter by which they acquired the high stewardship of the kingdoms of Bengal, Behar, and Orissa, in 1765. Under those two charters they act. As to the first, it is from that charter that they derive the capacity by which they can be considered as a public body at all, or capable of any public function ; it is from thence they acquire the capacity to take any other charter, to acquire any other offices, or to hold any other possessions. This being the root and origin of their power, it makes them responsible to the party from whom that power is derived. As they have emanated from the supreme power of this kingdom, they themselves are responsible—their body as a corporate body, themselves as individuals—and the whole body and train of their servants are responsible, to the high justice of this kingdom. In delegating great power to the India Company, this kingdom has not released its sovereignty. On the contrary, its responsibility is increased by the greatness and sacredness of the power given. For this power they are and must be responsible ; and I hope this day your lordships will show that this nation never did give a power without imposing a proportionable degree of responsibility.

Company's responsibility arising out of the assumption of Dewani

As to the other power, which they derived from the Mogul empire by various charters from that crown, and particularly by the charter of 1765, by which they obtained the office of lord high steward, as I said, or diwan, of the kingdoms of Bengal, Behar and Orissa, by that charter they bound themselves, and bound exclusively all their servants, to perform all the duties belonging to that new office. And by the ties

belonging to that new relation they were bound to observe the laws, rights, usages and customs, of the natives, and to pursue their benefit in all things ; which was the nature, institution, and purpose, of the office which they received. If the power of the sovereign from whom they derived these powers should be by any misfortune in human affairs annihilated or suspended, the duty of the people below, which they acquired under his charter, is not suspended, is not annihilated, but remains in all its force ; and, for the responsibility, they are thrown back upon that country from whence their original power, and along with it their responsibility, both emanated in one and the same act. For when the Company acquired that office in India, an English corporation became an integral part of the Mogul empire. When Great Britain assented to that grant virtually, and afterwards took advantage of it, Great Britain made a virtual act of union with that country, by which they bound themselves as securities for their subjects, to preserve the people in all rights, laws and liberties, which their natural original sovereign was bound to enforce, if he had been in a condition to enforce it. So that the two duties flowing from two different sources are now united in one, and come to have justice called for them at the bar of this House, before the supreme royal justice of this kingdom, from whence originally their powers were derived.

Company's  
responsibility  
to England  
for Dewani  
duties

Your lordships will recollect that the East India Company . . . . had its origin about the latter end of the reign of Elizabeth<sup>1</sup>, a period when all sorts of companies, inventions, and monopolies were in fashion. And at that time the Company was sent out with large, extensive powers for increasing the commerce and the honour of this country . . . . But their powers were under that charter confined to commercial affairs. By degrees, as the theatre of the operation was distant, as its intercourse was with many great, some barbarous, and all of them armed nations, where

Growth of  
Company's  
power and  
jurisdiction

<sup>1</sup> See Keith, *A Constitutional History of India*, Chapter I.

not only the sovereign but the subjects were also armed in all places, it was found necessary to enlarge their powers. The first power they obtained was a power of naval discipline in their ships—a power which has been since dropped. The next was a power of law martial. The next was a power of civil, and to a degree of criminal, jurisdiction within their own factory, within their own settlements, over their own people and their own servants. The next was—and there was a stretch indeed—the power of peace and war; those great, high prerogatives of sovereignty which never were known before to be parted with to any subjects. But those sovereign powers were given to the East India Company. So that when it had acquired them all, which it did about the end of the reign of Charles the Second, the East India Company did not seem to be merely a Company formed for the extension of the British commerce, but Company  
as a  
sovereign  
Power in reality a delegation of the whole power and sovereignty of this kingdom sent into the East. In that light the Company began undoubtedly to be considered, as a subordinate sovereign power; that is, sovereign with regard to the objects which it touched, subordinate with regard to the power from whence this great trust was derived<sup>1</sup>.....the constitution of the Company began in commerce and ended in empire .....it became that thing which was supposed by the Roman law so unsuitable—the same power was a trader, the same power was a lord.

In this situation, the India Company, however, Mercantile  
character  
of the  
Company's  
officials still preserved traces of its original mercantile character, and the whole exterior order of its service is still carried on upon a mercantile plan and mercantile principles: in fact, it is a state in the disguise of a

<sup>1</sup> For the political status of the chartered companies, see Lawrence, *Principles of International Law*, pp. 66-69. Lawrence says, "Like Janus of old, it (*i.e.*, a chartered company) has two faces. On that which looks towards the native tribes all the lineaments and attributes of sovereignty are majestically outlined. On that which is turned towards the United Kingdom is written subordination and submission."



merchant, a great public office in the disguise of a counting-house. Accordingly the whole order and series. . . is commercial : while the principal, inward, real part of the Company is entirely political. Accordingly the Company's service . is commercial.<sup>1</sup>

In the first place, all the persons who go abroad in the Company's service enter as clerks in the counting-house, and are called by a name to correspond to it—writers. In that condition they are obliged to serve five years. The next step is that of a factor, in which they are obliged to serve three years. The next step they take is that of a junior merchant, in which they are obliged to serve three years more. Then they become a senior merchant, which is the highest stage of advance in the Company's service, as a rank by which they had pretensions, before the year 1774, to the Council, to the succession of the Presidency, and to whatever other honours the Company has to bestow .

Gradation of  
Company's  
servants

My lords, there is something peculiar in the service of the East India Company, and different from that of any other nation that has ever transferred its power from one country to another. The East India Company in India is not the British nation . Nobody can go there that does not go in its service. Therefore the English nation in India is nothing but a seminary for the succession of officers. They are a nation of place-men. They are a republic, a commonwealth, without a people. They are a state made up wholly of magistrates. The consequence of which is, that there is no people to control, to watch, to balance against the power of office. The power of office, so far as the English nation is concerned, is the sole power in the country. There is no corrective upon it whatever. The consequence of which is, that, being a kingdom of magistrates, the *esprit de corps* is strong in it—the spirit of the body by which they consider themselves as having a common interest, and a common interest, separated both from the country

Defects of  
Company's  
adminis-  
tration :

(1) Absence  
of control

<sup>1</sup> See A. K. Ghosal, *The Civil Service in India*.

that sent them out and from the country in which they are, and where there is no control by persons who understand their language, who understand their manners, or can apply their conduct to the laws of the country. Such control does not exist in India. Therefore confederacy is easy, and has been general among them; and therefore your lordships are not to expect that that should happen in such a body which never happened in the world in any body or corporation, namely, that they should ever be a proper check upon themselves: it is not in the nature of things. . . . . And out of that has issued a series of abuses, at the head of which Mr. Hastings has put himself, against the authority of the East India Company at home and every authority in this country.

- (2) Corruption  
tion
- My lords, the next circumstance is—and which is curious too—that the emoluments of office do not in any degree correspond with the trust. For, under the name of junior merchant, and senior merchant, and writer, and those other little names of a counting-house, you have great magistrates; you have the administrators of revenues truly royal; you have judges civil, and in a great degree criminal, who pass judgments upon the greatest properties of the country. You have all these under these names; and the emoluments that belong to them are so weak, so inadequate to the dignity of the character, that it is impossible—I may say of that service that it is absolutely impossible—for the subordinate parts of it to exist, to hope to exist, as Englishmen who look at their home as their ultimate resource—to exist in a state of incorruption

- (3) Inexperience of officers
- My lord, the next circumstance which distinguishes the East India Company is the youth of the persons who are employed in the system of that service. They have almost universally been sent out at that period of life, to begin their progress and career in active life and in the use of power, which in all other places has been employed in the course of a rigid education. They have been sent there in fact . . . with a perilous independence, with too inordinate expectations,

and with boundless power. They are schoolboys without tutors; they are minors without guardians. The world is let loose upon them with all its temptations; and they are let loose upon the world, with all the powers that despotism can give. This is the situation of the Company's servants.

There is one thing that is remarkable. They are to exercise . . . high judicial powers—without the smallest study of any law, either general or municipal. It is made a rule in the service . . . that the judicial character, which is the last in study and the last in professional experience, that to which all professional men ultimately look up, is the first experimental situation of a Company's servant; and it is expressly said that the office and situation of a judge are to be filled by the junior servants of the Company. And, as the emolument is not equal to that of other situations, the judicial service is to be taken as *in transitu*—as a passage to other things; and as soon as a man has supplied the defects of his education by the advantage of experience, he is immediately translated to another situation, and another young man is sent there to learn, at the expense of the properties of India, to fill a situation which he is not to fill.

(4) Lack of proper equipment for judicial work

So with regard to the other situations. They are situations of great statesmen, which undoubtedly, according to the practice of the world, require rather a large converse with men, to fill properly, and much intercourse in life, than the study of books—though that has its eminent service. We know too that, in the habits of civilized life, in cultivated society, there is imbibed by men a good deal of the solid practice of government, of the true maxims of state, and everything that enables a man to serve his country. But these men are sent over to exercise of functions at which a statesman here would tremble, without any study, without any of that sort of experience which forms men gradually and insensibly to great affairs. These men are sent over to India without maturity, without experience, without knowledge or habits in

Officers' lack of wisdom and experience

cultivated life, to perform such functions which.....  
the greatest statesmen are hardly equal to.

My lords, by means of this bad system of things it has so happened, and does happen, that the very laws we have made, the covenants the Company has got its servants to enter into, and the orders that have been given, have proved ..most noxious and mischievous to the country, instead of beneficial . . .

All laws practically nullified by above defects

### 28. LORD CORNWALLIS ON INTERFERENCE OF DIRECTORS IN APPOINTMENTS OF OFFICERS, 1799.

(Letter to John Woodhouse, Director of the Company, August 10, 1799).<sup>1</sup>

I must freely acknowledge that before I accepted the arduous task of governing this country, I did understand that the practice of naming persons from England, to succeed to offices of great trust and importance to the public welfare in this country, without either knowing or regarding whether such persons were in any degree qualified for such offices, was entirely done away. If unfortunately so pernicious a system should be again revived, I should feel myself obliged to request that some other person might immediately take from me the responsibility of governing these extensive dominions, that I might preserve my own character, and not be a witness to the ruin of the interests of my country.

### 29. LORD CORNWALLIS ON INSUBORDINATION OF MADRAS GOVERNMENT, 1799. (Minute of Lord Cornwallis, February 5, 1799).

The Members of the Board were apprised on the day after the accounts arrived from Madras, that Tippo Sultan had committed actual hostilities against our ally the Rajah of Travancore; that in the critical situation in which the Company's affairs appeared to

<sup>1</sup> For the full text of the letter, see Ross, *Cornwallis Correspondence*, Vol. I, pp. 420-421.

be in the ~~Contest~~, I looked upon it as a duty which I owed to my country, to lay aside all considerations of my own personal ease or responsibility, or even of what the existing laws might specifically authorise, and to determine immediately to proceed to the coast as soon as might be possible, to take a temporary charge of the Civil and Military affairs at the Presidency of Fort St. George.

Decision of Lord Cornwallis to take temporary charge of civil and military affairs at Madras

I have already communicated to the Board that, exclusive of other reasons, I thought myself called upon to take so decided a step, from its being consistent with my knowledge that there was not a sufficient harmony and mutual confidence between the Civil and Military Departments

Causes :  
(1) Lack of harmony between civil and military departments at Madras

\* \* \* \*

The Board will likewise be sensible, that the inattention, almost amounting to disregard, which has been shown by the Madras Government to some of our late instructions on points of great importance, is highly deserving of our severe reprehension,<sup>1</sup> and could not fail to operate as an additional reason in my mind for entertaining great doubts of the good disposition or ability of that Government to support and maintain the public interests and honour at this critical period.

(2) Insufficiency of Madras Government

Upon the ground of state necessity, it was my intention to take the responsibility of an irregular measure upon myself, and to propose that the Board should invest me with full powers to take a temporary charge of the Civil and Military affairs at the Presidency of Fort St. George, by exercising the functions of Governor as well as those of Commander-in-Chief.

I have been highly gratified with the warm approbation which the members of the Board bestowed upon that determination

Plan approved by Supreme Council

<sup>1</sup> See Ross, *Cornwallis Correspondence*, Vol. I, pp. 477-480; Vol II, pp. 10-15, 480-483.

<sup>2</sup> The Governor-General's plan was not put into effect owing to the arrival of General Medows as Governor and

### 30. LORD CORNWALLIS ON THE RENEWAL OF THE EAST INDIA COMPANY'S CHARTER, 1790.

(Letter to Henry Dundas, President of the  
Board of Control, April 4, 1790).

I was happy to hear that the principles of that plan (*i.e.*, 'a plan for the government of our Indian possessions after the expiration of the Company's present charter') were still under deliberation, and that it was only upon the supposition that the commercial branch might be left to the Company, and the other departments taken into the hands of Government, that you had stated those queries. Many weighty objections occur to the separation that you propose, for it is almost beyond a doubt with me, that no solid advantages would be derived from placing the civil and revenue departments under the immediate direction of the King's Government; and I am perfectly convinced that if the fostering aid and protection, and, what is full as important, the check and control of the Governments abroad, are withdrawn from the commercial department, the Company would not long enjoy their new charter, but must very soon be reduced to a state of actual bankruptcy.

Cornwallis opposed to the plan of leaving only trade to the Company and taking administration into hands of Government

I am not surprised that after the interested and vexatious contradictions which you have experienced from the Court of Directors, you should be desirous of taking as much of the business as possible entirely out of their hands, but I know that great changes are hazardous in all popular Governments, and as the paltry patronage of sending out a few writers is of no value to such an administration as Mr. Pitt's, I should recommend it to your serious consideration, whether it would not be wiser ... to tie their hands from doing material mischief without meddling with

Patronage should be left to Directors

Commander-in-Chief of Madras. Lord Cornwallis regarded him as "a man of acknowledged ability and character" and felt that his own intervention in the affairs of Madras was no longer necessary. See Ross, *Cornwallis Correspondence*, Vol. I, p. 474; Vol. II, p. 48.

their imperial dignity or their power of naming writers, and not to encounter the furious clamour that will be raised against annexing the patronage of India to the influence of the crown, except in cases of the most absolute necessity.

That a Court of Directors formed of such materials as the present, can never, when left to themselves, conduct any branch of the business of this country properly, I will readily admit, but under certain restrictions, and when better constituted, it might prove an useful check on the ambitions or corrupt designs of some future Minister.<sup>1</sup> In order, however, to enable such Directors to do this negative good, or to prevent their doing much positive evil, they should have a circumscribed management of the whole, and not a permission to ruin uncontrolled, the commercial advantages which Britain should derive from her Asiatic territories.

Reformed  
Court of  
Directors  
may be a  
check on  
corrupt  
Ministers

It will of course have been represented to you that the India Company formerly was supported by its commerce alone, and that it was then richer than it is at present, and that when their Directors have no longer any business with governing empires, they may again become as thrifty merchants as heretofore. I am persuaded, however, that experience would give a contradiction to that theory, for if they should not have lost their commercial talents by having been Emperors, this country is totally changed by being under their dominion. There are now so many Europeans residing in India, and there is such a competition at every aurung of any consequence, that in my opinion even an upright Board of Trade sitting at Calcutta could not make advantageous contracts, or prevent the manufactures from being debased; and therefore that unless the Company have able and active Residents at the different factories, and unless those

Criticism of  
the view  
that Com-  
pany's relief  
from ad-  
ministrative  
duties will  
promote  
commerce

<sup>1</sup> Disgusted with the conduct of the Directors, Lord Cornwallis wrote to Dundas on March 4, 1792, "If the Court of Directors cannot be controlled, I retract my opinion in favour of their continuance after the expiration of the Charter."

Residents are prevented by the power of Government, from cheating them as they formerly did, London would no longer be the principal mart for the choicest commodities of India.

If the proposed separation was to take place, not a man of credit or character would stay in the Company's service if he could avoid it, and those who did remain, or others who might be hereafter appointed, would be soon looked upon as an inferior class of people, to the servants acting under appointments from His Majesty.

The contempt with which they would be treated would not pass unobserved by the natives, and would preclude the possibility of their being of essential use, even if they were not deficient in character or commercial abilities, and upon the supposition that the Company could afford to pay them liberally for their services.

When you add to the evils which I have described and which no man acquainted with this country will think fictitious, the jobbing that must prevail at the India House in a department which is in a manner given up to plunder, you will not, I am sure, think that I have gone too far in prophesying the bankruptcy of the Company.

Should  
Company  
be deprived  
of com-  
mercial  
monopoly ?

In answer to this statement of the impossibility of the Company's carrying on the trade, when all the other parts of the administration of the country are taken into the hands of Government, it may be said by people who have reflected but little on the subject ; if the Company cannot carry on the trade, throw it open to all adventurers. To that mode I should have still greater objections, as it would render it very difficult for Government to prevent this unfortunate country from being overrun by desperate speculators from all parts of the British dominions. The manufactures would soon go to ruin, and the exports, which would annually diminish in value, would be sent indiscriminately to the different countries of Europe.

Although I can see no kind of objection to your



opening the export trade from Britain to this country as much as you please, I cannot bring myself to believe that any person well acquainted with the manners of the natives, and with the internal state of this country, would seriously propose to throw the export trade from India entirely open, because it must necessarily come previously under consideration, whether the surplus revenue could be remitted by bills of exchange, and whether a more efficacious mode can be devised for securing the greatest possible advantages from this country to the British Government and to the nation at large, than by transmitting yearly a valuable investment of the best goods that Hindostan can afford, which will not only furnish a large sum in duties to the State, but bring foreign purchasers from all quarters to the London market. We have made our investments these last two years under every possible local disadvantage, *viz.* the exorbitant price of grain and cotton, the total failure of the silk, and the dreadful famine and inundations in the Dacca district; yet if you could get Mr. Scott<sup>1</sup> the Director, or some other person who would make a fair report, to enquire into the merits of these investments, I have no doubt of its appearing that the Company have not for many years received an investment of so good quality, or one that would have been likely to have afforded so large a profit, if besides all other disadvantages, the India sales in London had not been considerably injured by the troubles in France and by the war in other parts of Europe, as well as by the powerful competition of the British manufactures.

Economic  
effects of  
throwing  
export trade  
from India  
open to  
adventurers

\* \* \* \*

As the new system will only take place when the rights of the present Company cease, you cannot be charged with a violation of charters, and the attacks of the Opposition in Parliament will therefore be confined to an examination of its expediency and efficacy; I fancy I need hardly repeat to you that they would

<sup>1</sup> David Scott, Director of the Company for many years, and chairman in 1796 and 1801.

**Question of patronage** above all things avail themselves of any apparent attempt on your part to give an increase of patronage to the Crown, which could not be justified on the soundest constitutional principles, or on the ground of evident necessity, and would make use of it to misrepresent your intentions and principles, and to endeavour to inflame the minds of the nation against you.

**Charter should be renewed for a limited period** An addition of patronage to the Crown, to a certain degree, will however in my opinion be not only a justifiable measure, but absolutely necessary for the future good government of this country. But according to my judgment, a renewal of the Company's charter for the management of the territorial revenues and the commerce of India for a limited time (for instance ten or fifteen years), and under such stipulations as it may be thought proper to annex as conditions, would be the wisest foundation for your plan, both for your own sakes as Ministers, and as being best calculated for securing the greatest possible advantages to Britain from her Indian possessions, and least likely to injure the essential principles of our own Constitution.

**Number of Directors should be reduced** The present Court of Directors is so numerous, and the responsibility for public conduct which falls to the share of each individual is so small, that it can have no great weight with any of them, and the participation in a profitable contract, or the means of serving friends or providing for relations, must always more than compensate to them for the loss that they may sustain by any fluctuation that may happen in the market-price of the stock which constitutes their qualifications. I should therefore think that it would be very useful to the public, to reduce the number of Directors to twelve, or to nine; and if handsome salaries could be annexed to those situations, I should be clear for adopting means for their being prohibited from having an interest directly or indirectly in contracts, or in any commercial transactions whatever, in which the Company may have the smallest concern.

At the same time however, if one or both of these points should be carried, I would not by any means recommend that they should retain the power of appointing Governors, Commanders-in-Chief, or Members of Council, at any of the Presidencies ; the honour and interest of the nation, the fate of our fleets and armies, being too deeply staked on the conduct of the persons holding the above-mentioned offices, to render it safe to trust their nominations in any other hands but those of the executive Government of Britain. But as this measure, though not in fact deviating very widely from the existing arrangement, by which the King has the power of recalling those officers, would at first appear a strong one, and would be vehemently opposed, I would give it every qualification that the welfare and security of the country could admit of. I would establish it by law, that the choice of the Civil Members of Council should be limited to Company's servants of a certain standing (at least twelve years), which would in the mind of every candid person leave very little room in respect to them for ministerial patronage, and it should be left to the Court of Directors to frame such general regulations for the appointment to offices in India, as should be consistent with the selection of capable men, and to establish the strictest system that they can devise of check and controul upon every article of expenditure at the different Presidencies.

Who should  
appoint and  
recall  
Governors,  
Command-  
ers-in-Chief,  
and Mem-  
bers of  
Council ?

I would likewise recommend that it should be clearly understood and declared, that the Court of Directors should have a right to expect that His Majesty's Ministers would pay the greatest attention to all their representations respecting the conduct of the Governors, Commanders-in-Chief, and Councillors ; and that in case satisfactory redress should not be given to any of their complaints of that nature, that they should have a right to insist upon the recall of any Governor, Commander-in-Chief, or Councillor whom they should name, and that the utmost facility should be given to them to institute prosecutions against such Governors, &c., whose conduct may appear to them to

have been culpable, before the Court of Judicature which has been established by Act of Parliament for the trial of Indian delinquents.

All Euro-  
pean troops  
should be-  
long to the  
Crown

In regard to the Military arrangement, I am clearly of opinion that the European troops should all belong to the King, for experience has shown that the Company cannot keep up an efficient European force in India; this is a fact so notorious, that no military man who has been in this country will venture to deny it, and I do not care how strongly I am quoted as authority for it.

Indian  
troops  
should be  
left under  
the Com-  
pany

The circumstances, however, of the native troops are very different. It is highly expedient, and indeed absolutely necessary for the public good, that the officers who are destined to serve in those corps, should come out at an early period of life and devote themselves entirely to the Indian Service; a perfect knowledge of the language, and a minute attention to the customs and religious prejudices of the sepoys, being qualifications for that line which cannot be dispensed with. Were these officers to make a part of the King's army, it would soon become a practice to exchange their commissions with ruined officers from England, who would be held in contempt by their inferior officers, and in abhorrence by their soldiers, and you need not be told how dangerous a disaffection in our native troops would be to our existence in this country. I think therefore that as you cannot make laws to bind the King's prerogative in the exchanges or promotions of his army, it would be much the safest determination to continue the native troops in the Company's service, and by doing so you would still leave to the Court of Directors the patronage of cadets, and of course give some popularity to the measure.

Company's  
patronage

The ultimate line to be drawn, would give to the Court of Directors the appointment of writers to the Civil branches of the service, and of cadets for the native troops, and the power of prescribing certain general rules under the descriptions I have mentioned, for the disposal of offices by the Governments in India,

and of calling the Governors, &c., to an immediate account for every deviation from these rules, but they ought to be strictly prohibited from appointing or recommending any of their servants to succeed to offices in this country, as such appointments or recommendations are more frequently granted to intrigue and solicitation than to a due regard to real merit or good pretensions, and such interference at home must always tend in some degree to weaken the authority of the Government in India.

The mode of choosing the Directors, the term of their continuance in office, and the manner in which they should render an account of their own conduct, and lay statements of the affairs of the Company before the Proprietors of the Stock, with a variety of other points of that nature, will be subjects of regulation upon the present occasion; but upon the supposition of the charter's being renewed, it appears to me highly requisite for the public good that the right of inspection and controul in the King's Ministers should be without any exception as to their commerce; and as extended to every branch of the Company's affairs, altercations between the controuling power and the Court of Directors must always be detrimental to the public interest, whether occasioned by improper encroachments on one side, or an obstinate or capricious resistance on the other, it seems particularly desirable that not only the extent, but also the manner in which the Ministers are to exercise the right of inspection and controul, should be prescribed so clearly as to prevent if possible all grounds for misapprehension or dispute.

Ministers' right to inspect and control should be extended to all departments

### 31. LORD CORNWALLIS ON RELATIONS BETWEEN GOVERNOR-GENERAL AND COUNCIL, 1794.

(Minute, November 6, 1790).

I am aware that some inconvenience may arise by my absence from the seat of Government, and that the existing laws do not describe the powers which ought in such a case to be delegated by the Supreme

**Governor-General's absence from Calcutta rendered necessary by war with Tipu** Board to the Governor-General. But notwithstanding these objections, I am so fully impressed with the belief that the public interest will be on this occasion best promoted by my undertaking the direction of the war (against Tipu Sultan) in person, that I have resolved, with the approbation of the Board, to proceed to Madras, and should the Board concur in opinion with me on the propriety and utility of this measure, I need hardly suggest, that it will become necessary

**Governor-General should be invested with adequate powers for conduct of war** to invest me with such powers as may be thought suitable to my station of Governor-General, and which may appear to be calculated to enable me to apply the whole force of the Company with energy for the prosecution of the war, or to avail myself with promptitude and effect of any favourable opportunity that may offer, for negotiating and obtaining an honourable and advantageous peace.

**Relations between Governor-General and Council during his absence from Calcutta** Enjoying as I do the high satisfaction of living on terms of cordiality and friendship, both public and private, with my colleagues in office<sup>1</sup>; and well acquainted as I am with their earnest desire to support my endeavours for promoting the public prosperity, I could not entertain a doubt, even if I had not formerly on a similar occasion been flattered with the most liberal declarations of their confidence, that the measures for the internal Government of Bengal which I have hitherto pursued, and in the success of which my share of responsibility is great, will, during my absence, be uniformly supported and punctually executed. I have the most implicit reliance on their communicating with me upon all points of internal business, in the manner that will best tend to promote the public good, and to preserve my authority in this Government.

The Members of the Council may on the other hand be assured, that I shall correspond and communi-

<sup>1</sup> "The flattering marks of personal confidence and friendship which I have constantly experienced, both in my public and private capacity, from the members of the Board, have made the most lasting impression on my mind, and claim my warmest acknowledgment."—*Memoirs of Lord Cornwallis*, December 3, 1790.

cate my sentiments to them, with as much punctuality and expedition as the nature of the Service in which I am going will allow, and that I shall not only give an accurate detail of any material transactions or occurrences that may happen, but also endeavour to render a satisfactory account of every part of my public conduct ; I shall likewise on all occasions receive their advice and suggestions with all the attention and deference which is due to private friends, and to the acting Members of the Supreme Government.

## 32. INDEPENDENT POWERS OF GOVERNORS, 1793.

(33 George III, Cap. XXXII).

10. And whereas it will tend greatly to the strength and security of the British possessors in India, and give energy, vigour and despatch to the measures and proceedings of the executive government within the respective presidencies, if the Governor-General of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with discretionary power of acting without the concurrence of their respective Councils, or forbearing to act according to their opinions in cases of high importance, thereby subjecting themselves personally to answer to their country for so acting ; be it enacted, that when any measure shall be proposed whereby the interests of the Company, or the safety or tranquillity of the British possessions in India, may in the judgment of the Governor-General, or the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measure ought to be adopted or that the same ought to be suspended or wholly rejected, and the other members of such Council shall dissent from such opinion, the Governor-General or such Governor, and the other members of the Council, shall forthwith mutually communicate in Council to each other, in writing, the reasons of their respective

Why  
Governors  
should be  
allowed to  
overrule  
their  
Councils

When  
Governors  
may over-  
rule their  
Councils

System of  
Minute-  
writing

opinions and if, after considering the same, the Governor and the other members of the Council shall retain their opinions, it shall be lawful for the Governor-General in the Supreme Council of Fort William, or either of the said Governors in their respective Councils, to make any order for suspending or rejecting the measure in part or in the whole, or for adopting the measure ; which order shall be signed as well by the Governor-General, or Governor, as by all the other members of the Council then present, and shall by virtue of this Act be as effectual as if all the other members had concurred .

### 33. CHARTER ACT OF 1793.

(33 Geo. III, c. 52).

An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations ; for establishing further regulations for the government of the said territories, and the better administration of justice within the same ; for appropriating to certain uses the revenues and profits of the said Company ; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.

\* \* \* \*

2. And be it further enacted that it shall and may be lawful for His Majesty, his heirs or successors, by any letters patent, or by any commission or commissions to be issued under the great seal of Great Britain, from time to time, to nominate, constitute and appoint, during his or their pleasure, such members of the privy council (of whom the two principal Secretaries of State, and the Chancellor of the Exchequer for the time being, shall always be three), and such other two persons as His Majesty, his heirs or successors, shall think fit to be, and who shall accordingly be and be styled Commissioners for the Affairs of India.

King may  
appoint  
Commissioners for  
Indian  
affairs



3. And be it further enacted, that any three or more of the said Commissioners shall and may form a board, for executing the several powers which by this act, or by any other act or acts, are or shall be given to or vested in the said commissioners; and that the first-named commissioner in any such letters patent or commission for the time being shall be the president of the said board; and that when any board shall be formed in the absence of the president, the commissioner whose name shall stand next in the order of their nomination in the said commission, of those who shall be present, shall for that turn preside at the said board.

\* \* \* \*

11. And be it further enacted, that the Court of Directors of the said Company for the time being shall, and they are hereby required, from time to time, to deliver to the said board copies of all minutes, orders, resolutions and proceedings of all courts of proprietors, general or special, and of all Courts of Directors, within eight days after the holding of such courts respectively, and also copies of all letters, advices, and dispatches which shall at any time or times be received by the said Court of Directors, or any committee of directors, from the East Indies, or from any other of their settlements or factories within the limits of their exclusive trade, or from any of the servants of the said United Company, stationed at Saint Helena, Bussara, Suez, Aleppo, or other parts beyond the seas, in anywise relating to or concerning the civil or military government, or the revenues of the said territories and acquisitions in India, immediately after the arrival and receipt thereof.

\* \* \* \*

16. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend, to give to the said board of commissioners any power or authority to issue or send any orders or instructions which do not relate to points connected with the civil or military government, or

Three Com-  
missioners  
may form  
a Board

Court of  
Directors to  
deliver to  
the Board,  
copies of all  
proceedings  
and of  
dispatches  
received  
relating to  
the Civil  
or Military  
Government  
or revenues

Board to  
issue orders  
relating to  
the Civil or  
Military  
Government,  
or the

revenues  
only and if  
Directors  
think they  
do not relate  
to them,  
they may  
petition  
the King

revenues of the British territories or possessions in India, nor to expunge, vary, or alter any dispatches proposed by the said Court Directors as aforesaid, which do not relate to the said government or revenues; and that if the said board shall send any orders or instructions to the said Court of Directors, to be by them transmitted, which in the opinion of the said Court of Directors shall relate to points not connected with the said civil or military government, or revenues, then and on any such occasion it shall be lawful for the said Court of Directors to apply by petition to His Majesty in Council touching the same, and His Majesty in Council shall decide how far the same be or be not connected with the civil or military government and revenues of the said territories and possessions in India, which decision shall be final and conclusive.

\* \* \* \*

Board may  
send orders  
to the Secret  
Committee  
of Directors,  
who shall  
transmit the  
same to  
India

19. Provided also, and be it further enacted, that if the said Board of Commissioners shall be of opinion that the subject-matter of any of their deliberations concerning the levying war, or making peace or treating or negotiating with any of the native princes, or states in India, intended to be communicated in order to any of the Governments or Presidencies in India, shall be of a nature to require secrecy, it shall and may be lawful for the said Board to send their orders and instructions to the Secret Committee of the said Court of Directors to be appointed as is by this act directed, who shall thereupon, without disclosing the same, transmit their orders and dispatches, according to the tenor of the said orders and instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall be bound to pay a faithful obedience thereto, in like manner as if such orders and instructions have been sent to them by the said Court of Directors.

Directors  
to appoint  
a Secret  
Committee

20. And be it further enacted, that the said Court of Directors shall, from time to time, appoint

a Secret Committee, to consist of any number, not exceeding three, of the said Directors, for the particular purposes in this act specified :

\* \* \* \*

22. Provided also, and be it further enacted, that when any of the Governments or Presidencies in India shall be of opinion that any of their dispatches to Great Britain, concerning the Government of the said territories and acquisitions, or the levying war, or making peace or negotiations, or treaties with any of the native princes or states of India, shall be of a nature to require the same to be kept secret, it shall be lawful for the said Governments or Presidencies respectively to address their dispatches requiring such secrecy, under cover sealed with their seals, unto the said Secret Committee of Directors of the said Company, for the inspection of such Committee and that immediately upon the arrival of such dispatches so addressed, the said Secret Committee of Directors shall deliver the same or copies thereof to the said Board.

Presidencies in India may send dispatches to the Secret Committee who shall deliver them to the Board

\* \* \* \*

24. And be it further enacted, that the whole Civil and Military Government of the Presidency of Fort William in Bengal, and also the ordering, management, and Government of all the territorial acquisitions and revenues in the Kingdoms or Provinces of Bengal, Behar and Orissa, shall be and are hereby vested in a Governor General and three Counsellors of and for the said Presidency, subject to such rules, regulations, and restrictions, as are made, provided, or established in that behalf in this act, or in any other act or acts now in force, and not by this act repealed or altered; and that the whole civil and military government of the Presidency of Fort Saint George, on the coast of Coromandel, and the ordering, management, and government of all the territorial acquisitions and revenues on the said coast, and also so much and such parts of the territories and possessions on the coast of Orissa, with the revenues of the same, as have been and now are under

Government of the Presidencies vested in the Governors and three Counsellors respectively

the administration of the government or Presidency of Fort Saint George, shall be and are hereby vested in a Governor and three Counsellors of and for the said Presidency of Fort Saint George, subject to such rules, regulations and restrictions as aforesaid; and that the whole civil and military government of the Presidency and island of Bombay on the coast of Malabar, and the ordering, management and government of all territorial acquisitions and revenues on the said coast of Malabar, shall be and are hereby vested in a Governor and three Counsellors of and for the said Presidency and island of Bombay, subject as aforesaid, and the said Governors and Councils of the said Presidencies of Fort Saint George, and Bombay respectively, being also subject to the superintendence and control of the said Governor-General in Council, in manner by this act provided or directed in that behalf, any act or acts to the contrary notwithstanding.

Vacancies of  
Governors,  
&c. to be  
filled up  
by the  
Directors

25. And be it further enacted, that all vacancies happening in the office of Governor General of Fort William in Bengal, or of any of the members of the Council there, or of Governors of either of the Company's Presidencies or settlements of Fort Saint George or Bombay, or of any of the members of the Council of the same respectively, or of Governor of the forts and garrisons of Fort William, Fort Saint George, or Bombay, or of Commander-in-Chief of all the forces in India, or of any provincial Commander-in-Chief of the forces there, all and every of such vacancies shall be filled up and supplied by the Court of Directors of the said United Company, the vacancies of any of the said members of Council being always supplied from amongst the list of senior merchants of the said Company, who shall have respectively resided twelve years in India in their service, and not otherwise, except as is hereinafter otherwise provided.

\* \* \* \*

29. And be it further enacted, that if any vacancy shall happen in the office of Governor General of Fort

William, or of Governor of Fort Saint George or Bombay respectively, when no provisional or other successor, shall be upon the spot to supply such vacancy, then and in every such case, the Counsellor of the Presidency wherein such vacancy shall happen, next in rank to the said Governor-General, or Governor respectively, shall hold and execute the said office of Governor General or Governor, until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and if the Council Board shall happen during that interval to become reduced to one only member, besides the acting Governor-General or Governor, then and in such case the person so acting as Governor-General or Governor shall be, and is hereby empowered to call to the Council Board such one of the senior merchants of the said Company, at such Presidency where the vacancy shall occur, as he shall think fit to be a temporary member of the said board, and that the person so called shall accordingly sit and act as a member of the said Council, and shall have the same powers in all other respects as are given to persons appointed to the Council Board by the said Court of Directors, until the arrival of a successor or other appointment made to the office of Governor General or Governor respectively and that every such acting Governor General, Governor, and occasional Counsellor, shall, during the time of their continuing to act as such respectively, be entitled to receive the several emoluments and advantages appertaining to the said offices by them respectively supplied, such acting Governor General and Governor foregoing their salary and allowances of Counsellor for the same period.

How vacancies are to be supplied when no successors are on the spot

30. Provided always, and be it further enacted, that if at the time of any vacancy happening in the office of Governor General, or of a Governor of any of the said Presidencies, no eventual successor appointed under the authority of this act shall be present upon the spot, any Commander-in-Chief, although he shall be then a member of the Council of the Presidency where such vacancy shall occur, shall not suc-

Next Member of Council to Commander-in-Chief to succeed to the temporary Government of a Presidency,

unless the  
Commander-  
in-Chief  
shall have  
been pro-  
visionally  
appointed

ceed to the temporary government of such Presidency unless such Commander-in-Chief shall have been provisionally appointed to supply the same, but that the vacancy shall be supplied by the Counsellor next in rank at the Council Board to such Commander-in-Chief anything herein contained to the contrary notwithstanding.

Vacancy of  
Counsellors,  
when no  
successors  
are on the  
spot, to be  
supplied  
by the  
Governor-  
in-Council  
from the  
senior  
merchants

31. And be it further enacted, that if any vacancy shall happen of the office of a Counsellor at either of the said Presidencies, when no person provisionally or otherwise appointed to succeed thereto shall be then resident on the spot, then and on every such occasion such vacancy shall be supplied by and at the nomination or appointment of the Governor-General in Council of Fort William, or the Governor in Council of Fort Saint George or Bombay respectively, from amongst the senior merchants in the said Company's service in India; and that the person or persons so nominated shall execute the said office, and shall have the same powers in all respects as are given to persons appointed to the Council Board by the said Court of Directors, until a successor or successors shall arrive, duly appointed by the said Court of Directors, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office or offices during his or their continuance therein respectively.

Commander-  
in-Chief,  
when not the  
Governor  
at the Pre-  
sidency, may  
by the autho-  
rity of the  
Directors, be  
the second  
member of  
the Council

32. And be it further enacted, that when the office of Governor General, and the office of Commander-in-Chief of all the forces in India, shall not be vested in the same person, such Commander-in-Chief shall and may, if specially authorised for that purpose by the said Court of Directors, and not otherwise, be a member of the Council of Fort William; and that when the offices of Governor of Fort Saint George, and Commander-in-Chief of the forces there, shall be vested in different persons, or the offices of Governor of Bombay, and Commander-in-Chief of the forces in Bombay, shall be vested in different persons, such respective Commanders-in-Chief shall and may, if specially authorised by the Court of Directors, and not otherwise, be a member of Council at the said res-

pective Presidencies ; and that when any Commander-in-Chief shall be appointed a member of any of the said Council such commander shall have rank and precedence at the Council Board next to the Governor General, or Governor of the same Presidency ; but no Commander-in-Chief shall be entitled to any salary or emolument in respect of his being a member of any of the said Councils, unless the same shall be specially granted by the Court of Directors of the said Company.

33. Provided always, and be it further enacted, that when the Commander-in-Chief of all the forces in India (not being likewise Governor General) shall happen to be resident at either of the Presidencies of Fort Saint George or Bombay, the said Commander-in-Chief shall, from the time of his arrival, and during his continuance at such Presidency, be a member of the Council of such Presidency, and during that period the provincial Commander-in-Chief of the forces of the same Presidency, if he shall be a member of the Council thereof, shall and may continue to sit and deliberate, but shall not have any voice at the Council Board.

Commander-in-Chief in India, not being Governor-General, while resident at Fort Saint George or Bombay shall be a member of Council

34. And be it further enacted, that if any of the members of the Council of either of the said Presidencies shall by any infirmity or otherwise be rendered incapable of acting, or of attending to act as such, or if any of such members shall be absent from the Presidency, and the Governor General, or either of the said Governors, shall be desirous of having the advice of a full Council upon any urgent business; the Governor General, or such Governors, respectively, shall by virtue of this act have full power and authority to call any provisional successor appointed, then on the spot, or, there being none such on the spot, then any senior merchant on the spot, to assist at the Council Board for the turn ; but that such provisional successor, or other person, shall not be entitled to any salary or other emolument in respect thereof, nor shall his acting as an occasional member of Council, in manner aforesaid,

If any member shall be incapable of attending, the Governor of the Presidency may call to the Council a provisional successor

deprive him of any office or emolument he before enjoyed.

**King may remove any servant of the Company in India** 35. And be it further enacted, that it shall and may be lawful to and for the King's majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the President of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said United Company in India for the time being, and to vacate and make void all or every, or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments; and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and specified in that behalf: provided always, that a duplicate or copy of every such writing or instrument, under His Majesty's sign manual, attested by the said President for the time being, shall, within eight days after the same shall be signed by His Majesty, his heirs or successors, be transmitted or delivered to the Chairman or Deputy Chairman for the time being of the said Company, to the intent that the Court of Directors of the said Company may be apprized thereof.

**Directors not precluded from recalling their servants** 36. Provided always, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said Court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants, at their will and pleasure, in the like manner as if this act had not been made, any Governor-General, Governor or Commander-in-Chief, appointed by His Majesty, his heirs or successors, through the default



of appointment by the said Court of Directors, always excepted; anything herein contained to the contrary notwithstanding.

37. And be it further enacted, that the departure from India of any Governor-General, Governor, Member of Council, or Commander-in-Chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office or employment, and that the arrival in any part of Europe of any such Governor-General, Governor, Member of Council, or Commander-in-Chief, shall be a sufficient indication of such intent; and that no act or declaration of any Governor-General or Governor, or Member of Council, during his continuance in the Presidency whereof he was so Governor-General, Governor, or Counsellor, except by some deed or instrument in writing, under hand and seal, delivered to the secretary for the public department of the same Presidency, in order to its being recorded, shall be deemed or held as a resignation or surrender of his said office; and that the salary and other allowances of any such Governor-General, or other officers respectively, shall cease from the day of such his departure, resignation, or surrender; and that if any such Governor-General, or any other officer whatever in the service of the said Company, shall quit or leave the Presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such Presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such Presidency or settlement, any law or usage to the contrary notwithstanding.

Departure from India of Governor-General with intent to return to Europe, to be deemed a resignation of employment

While at the Presidency no resignation of a Governor-General to be valid, except delivered in writing to the Secretary

Regulation respecting salaries

39. And be it further enacted, that all orders and other proceedings of the Governor-General and Council of Fort William shall be expressed to be made by the

**Proceedings to be expressed to be made by the Governor and Council, and signed by the Secretary** Governor-General in Council ; and that all orders and other proceedings of the Governors and Councils of Fort Saint George and Bombay respectively shall be expressed to be made by the Governor in Council, and not otherwise ; and that the several orders and proceedings of all the said Presidencies shall, previous to their being published or put in execution, be signed by the Chief Secretary to the Council of the Presidency, by the authority of the Governor-General in Council, or Governor in Council, as the case may be.

**Governor-General in Council empowered to superintend the other Presidencies** 40. And be it further enacted, that the Governor-General in Council at Fort William shall have and be invested by virtue of this act with, full power and authority to superintend, control and direct the several Governments and Presidencies of Fort Saint George and Bombay, and all other Governments erected or to be erected by the said United Company, within the limits of their said exclusive trade, in all such points as shall relate to any negotiations or transactions with the country powers or States, or levying war or making peace, or the collection or application of the revenues of the said acquisitions and territories in India, or to the forces employed at any of such Presidencies or Governments, or to the Civil or Military Government of the said Presidencies, acquisitions, or territories, or any of them.

**Other Presidencies to obey the orders of the Governor-General in Council, if not repugnant to instructions from England** 41. And in order to prevent the embarrassment and difficulty which may otherwise arise from any doubt whether orders or instructions of the Governor-General in Council of Fort William relate to other points than those aforesaid be it further enacted, that notwithstanding any doubt which may be entertained by the said Presidencies or Governments to whom such orders or instructions shall be given respecting the power of the Governor-General in Council to give such orders, yet the said Presidencies or Governments shall be bound to obey such orders and directions of the said Governor-General in Council, in all cases whatever, except only where they shall have received positive orders and instructions from the said

Court of Directors, or from the Secret Committee of Governor-  
 Directors, by the authority of the said Board of Com-  
 missioners for the affairs of India, repugnant to the  
 orders and instructions of the said Governor-General  
 in Council, and not known to the said Governor-  
 General in Council, at the time of dispatching their  
 orders and instructions as aforesaid; and the said  
 Governor-General in Council shall, at the time of  
 transmitting all such orders and instructions,  
 transmit therewith the dates of, and the times of, re-  
 ceiving the last dispatches, orders, and instructions,  
 which they have received from the Court of Direc-  
 tors, or from the said Secret Committee by the direc-  
 tion of the said Board of Commissioners, or any of the  
 points contained therein; and the said Presidencies,  
 Governments, and Settlements, in all cases where they  
 have received any orders from the said Court of Direc-  
 tors, or from the said Secret Committee by the direc-  
 tion of the Board of Commissioners as aforesaid,  
 which they shall deem repugnant to the orders of the  
 said Governor-General in Council of Fort William,  
 and which were not known to the said Governor-  
 General and Council at the time of dispatching their  
 orders and instructions as aforesaid, shall forthwith  
 transmit copies of the same, together with an account  
 of all instructions or orders made by them in conse-  
 quence thereof, to the Governor-General in Council  
 of Fort William, who shall, after the receipt of the  
 same, dispatch such further orders and instructions  
 to the said Presidencies, and Governments or Settle-  
 ments, as the said Governor-General in Council may  
 judge necessary thereupon.

42. And for as much as to pursue schemes of  
 conquest and extension of dominion in India are  
 measures repugnant to the wish, the honour, and  
 policy of this nation: be it further enacted, that it  
 shall not be lawful for the Governor-General in Coun-  
 cil of Fort William aforesaid, without the express  
 command and authority of the said Court of Direc-  
 tors, or of the said Secret Committee by the authority  
 of the said Board of Commissioners for the Affairs of  
 War not to be declared by the Governor-General in Council without the command of the Directors,

but preparations for hostilities may be made India, in any case (except where hostilities have actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes or states dependent thereon, or whole territories, the said United Company shall be at such time engaged by any subsisting treaty to defend or guarantee) either to declare war or commence hostilities, or enter into any treaty for making war against any of the country princes or States in India, or any treaty for guaranteeing the possessions of any country princes or States : and that in any such case it shall not be lawful for the said Governor-General and Council to declare war or to commence hostilities, or to enter into any treaty for making war against any other prince or state, than such as shall be actually committing hostilities, or making preparations as aforesaid, or to make such treaty for guaranteeing the possessions of any prince or State, but upon the consideration of such prince or State actually engaging to assist the Company against such hostilities commenced, or preparations made as aforesaid ; and in all cases where hostilities shall be commenced, or treaty made, the said Governor-General and Council shall, by the most expeditious means they can devise, communicate the same unto the said Court of Directors, or the said Secret Committee, together with a full state of the information and intelligence upon which they shall have commenced such hostilities, or made such treaties motives and reasons for the same at large.

Communications for hostilities may be made to the Directors  
Government of Fort Saint George or Bombay not to declare war, but by orders from Fort William or the Directors

43. And be it further enacted, that it shall not be lawful for the Governors and Counsellors of Fort Saint George and Bombay, or of any other subordinate settlement, to make or issue any order for commencing hostilities or levying war, or to negotiate or conclude any treaty of peace, or other treaty, with any Indian Prince or State (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such hostilities or treaty) unless in pursuance of express orders from the said Governor-General in Council of Fort William

aforesaid, or from the said Court of Directors, or from the said Secret Committee by the authority of the said Board of Commissioners for the Affairs of India, and every such treaty shall, if possible, contain a clause for subjecting the same to the ratification or rejection of the Governor-General in Council of Fort William aforesaid : and the said Governors and Counsellors, and other officers of of the said Presidencies of Fort Saint George and Bombay, or other Settlements respectively, are hereby required to pay and yield obedience to all such orders as they shall, from time to time, respectively receive from the said Governor-General in Council of Fort William aforesaid, concerning the matters aforesaid ; and that all and singular the said Governors, Counsellors, and other officers who shall refuse or wilfully neglect or forbear to pay obedience to such orders and instructions as they shall receive from the said Governor-General in Council of Fort William as aforesaid, shall be liable to be removed, dismissed, or suspended from the exercise of their respective offices or powers by order of the said Governor-General in Council of Fort William, and be sent to England, and be subject to such further pains and penalties as are or shall be provided by law in that behalf.

Penalty on  
Governors  
of Fort  
St. George  
and Bombay  
for neglect  
of orders  
from Fort  
William

44. And be it further enacted, that the Governors and Counsellors of the said Presidencies of Fort Saint George and Bombay respectively for the time being, and the Governors and Counsellors, or other chief officer or officers of, and belonging to, any other British settlement in India, shall, and they are hereby respectively required constantly and diligently to transmit to the said Governor-General in Council at Fort William aforesaid, true and exact copies of all orders, resolutions, and acts in Council of their respective Governments, Presidencies, and Councils, and also advice and intelligence of all transactions and matters which shall come to their knowledge, material to be communicated to the Governor-General in Council of Fort William aforesaid, or which the said Governor General in Council shall, from time to time, require.

Presidencies  
of Fort  
St. George  
&c. to send  
to Fort  
William  
copies of  
all their  
orders

Governor-General, or  
 Governors,  
 may order  
 measures  
 proposed  
 in Council  
 about which  
 they differ  
 from the  
 other mem-  
 bers, to be  
 adopted or  
 suspended

45. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive government within the respective Presidencies if the Governor General of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with a discretionary power of acting without the concurrence of their respective Councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting, or forbearing to act; be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the Councils of Fort Saint George and Bombay, whereby the interests of the said United Company, or the safety or tranquillity of the British possessions in India, or any part thereof, are, or may, in the judgment of the Governor-General, or of the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other Members of such Council then present shall differ in and dissent from such opinion, the said Governor-General or such Governor, and the other Members of the Council shall, and they are hereby directed forthwith mutually to exchange with and communicate in Council to each other, in writing, under their respective hands (to be recorded at large on their secret consultations) the respective grounds and reasons of their respective opinions; and if, after considering the same, the said Governor-General, or such Governor respectively, and the other Members of the said Council, shall severally retain their opinions, it shall and may be lawful to and for the said Governor-General in the Supreme Council.

of Fort William, or either of the said Governors in their respective Councils, to make and declare any order (to be signed and subscribed by the said Governor-General, or by the Governor making the same) for suspending or rejecting the measure or question so proposed or agitated in part or in the whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said Governor-General, or such Governors in their respective Councils, shall think fit and expedient; which said last mentioned order and resolution, so made and declared, shall be signed as well by the said Governor-General, or the Governor so making and declaring the same, as by all the other Members of the Council then present, and shall by force and virtue of this act be as effectual and valid, to all intents and purposes, as if all the said other Members had advised the same, or concurred therein; and the said Members of Council, and all officers, Civil and Military, and all other persons concerned, shall be, and they are hereby commanded, authorised and enjoined to be, obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

\* \* \* \*

47. And be it further enacted, that the Governor-General, or Governor, who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other Members of Council, shall alone be held responsible for the same, and the consequences thereof.

\* \* \* \*

49. Provided always, and be it further enacted, that nothing in this contained shall extend, or be construed to extend, to give power to the said Governor-General of Fort William in Bengal, or to either of the said Governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the Councils of

Governor-General &c., making any order without the consent of the Council, to be responsible for the same, but not to make any order which could not have been made with the consent of the Council

the respective Governments or Presidencies, any thing herein contained to the contrary notwithstanding.

50. Provided also, and be it further enacted and declared, that nothing in this act contained shall extend, or be construed to extend, to give any discretionary power of acting, or forbearing to act, without the concurrence of the other Members of Council, unto any person on whom the said office of Governor-General, or the said office of Governor respectively, shall happen to devolve by the death or resignation of any Governor-General, or Governor for the time being respectively, or unto any Deputy Governor-General, unless such person shall have been provisionally appointed to succeed to such respective office by the said Court of Directors, or unless and until such person shall have been or shall be confirmed in the said office, and that in the meantime all orders, resolutions, and other acts and things in such Presidency, shall be determined by the voice of the major part in number of the Governor-General and Counsellors, or Governor and Counsellors present at the making or doing thereof, such Governor-General or Governor having on any equality of voices a casting vote, and not otherwise, or in any other manner, any thing in this act contained to the contrary notwithstanding.

No person to act, without the concurrence of the Council, on whom the office of Governor-General or Governor shall devolve by death, unless provisionally appointed

\* \* \* \*

53. And be it further enacted, that when and so often as the said Governor-General shall on any occasion be absent from his own Government of Bengal, such one of the Members as the said Governor-General shall nominate for the purpose, shall be styled and act as Vice-President and Deputy-Governor of Fort William, and that the Government of the said Presidency shall be exercised by such Vice-President or Deputy, and the other Member or Members of the said Council, in like manner, and no further or otherwise than as the Government of the said Presidencies of Fort Saint George and Bombay may be exercised by Governors in Council there, subject nevertheless to the restrictions in this act contained.

Governor-General to nominate a Vice-President of Fort William to act during his absence



54. And be it further enacted, that if the said Governor-General, during his absence from his own Government of Bengal, shall judge it necessary to issue any orders or directions to any of the said Governments or Presidencies in India, or to any of the officers or servants of the said Company acting under the authority of any of the said Presidencies, without previously communicating such orders or instructions to the said respective Governments, under the authority of which such officers or servants shall be acting, it shall and may be lawful for him to issue the same, and that the said respective Governments or Presidencies, and also such officers and servants shall, and they are hereby severally and respectively authorised and required to, obey the same, and such orders and instructions shall be of the same force as if the same had been made by the said Governor-General in Council at Fort William, but not of any greater or other force or validity; and that if such orders or directions shall be made by the said Governor-General of his own sole authority, or without the concurrence of the other Members of Council of either of the said Presidencies of Fort Saint George and Bombay respectively, in that case the said Governor-General shall be alone held responsible for the same, in the like manner as for any orders or resolutions by him made in Council at Fort William, of his own sole authority, without the concurrence of the other Members of the same Council, according to the directions and true intent and meaning of this act: Provided always, that such Governor-General shall and he is hereby required to, transmit by the first opportunity, to the Governors and Councils of the respective Presidencies to which the officers or servants to whom any such orders or instructions shall be so sent to be executed shall belong, copies of such orders or instructions respectively, with his reasons or inducements for issuing the same, and also to transmit to the Court of Directors of the said Company, by the first opportunity that shall or may occur, a copy of all orders and instructions by him so sent to any of the said Governments, Presidencies,

But while absent, Governor-General may issue order to the officers and servants of the other Presidencies

officers, or servants respectively, together with his reasons and inducements for sending or issuing the same.

Directors with the approbation of the Board, may suspend the powers of the Governor-General to act upon his own authority

55. Provided also, and be it further enacted, that it shall and may be lawful for the Court of Directors of the said Company, with the approbation of the Board of Commissioners for the Affairs of India, to suspend all or any of the powers hereby given to the Governor-General of Fort William to act upon his own sole authority, at and for such time or times as they may judge expedient or necessary, and that the same shall be suspended accordingly, from the time of the arrival of their orders for that purpose in India : and also for the said Court of Directors with such approbation as aforesaid, to receive the said powers, when and as they shall think fit : any thing herein contained to the contrary notwithstanding.

\* \* \* \*

Receiving gifts to be deemed a misdemeanor

62. And be it further enacted, that the demanding or receiving any sum of money, or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the person receiving the same, or for, or pretended to be for the use of the said Company, or of any other person whatsoever, by any British subject, holding or exercising any office or employment under His Majesty, or the said United Company, in the East Indies, shall be deemed and taken to be extortion and misdemeanor at law, and shall be proceeded against and punished as such, under and by virtue of this act, and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof."

\* \* \* \*

Neglect to execute the orders of the Directors to be deemed a misdemeanor

65. And be it further enacted, that the wilful disobeying, or the wilfully omitting, forbearing, or neglecting to execute the orders or instructions of the Court of Directors of the said Company, by any Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or by any other of the officers

or servants of the said United Company in the East Indies (unless in cases of necessity, the burthen of the proof, of which necessity shall lie on the party so disobeying, or omitting or forbearing to execute such orders and instructions as aforesaid), and every wilful breach of the trust and duty of any office or employment, by any such Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or by any of the officers or servants of the said United Company in the East Indies shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this act.

\* \* \* \*

67. And be it further enacted, that all His Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them, done or to be done or committed in any of the lands or territories of any native prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government of India.

King's subjects amenable to Courts of Justice in India and Great Britain for offences in the territories of native princes

\* \* \* \*

137. And be it further enacted, that it shall not be lawful for any Governor-General, or Governor, or any Member of Council of the said Presidencies in India, to be concerned in any trade or traffic whatever, except on account of the said Company, nor for any Collector, Supervisor, or other person employed or concerned in the collection of the revenues, or the administration of Justice, in the provinces of Bengal, Behar and Orissa, or either of them, or their agents or servants, or any person or persons in trust for them or

No Governor General to trade, except on account of Company

No Judge to be concerned in any trade

any of them, to carry on or be concerned in or to have any dealings or transactions, by way of traffic or trade, at any place within any of the Provinces in India, or other parts, or to buy any goods, and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company; nor shall it be lawful for any of the judges of the Supreme Court of Judicature to be concerned in any trade or traffic whatever; nor shall it be lawful for any of His Majesty's subjects in the said provinces to engage, intermeddle, or be in anywise concerned, directly or indirectly, in the inland trade in salt, beetlenut, tobacco, or rice, except on the account of the said Company, or with their permission, on pain of forfeiting all such goods or commodities which they, or any of them, shall so buy and sell again, by way of traffic, or in which any of them shall so trade, and also treble the value thereof, one moiety to the said United Company, and the other moiety to him or them who will sue for the same.

No person  
whatever  
to be con-  
cerned in  
inland trade  
in salt, etc.  
except with  
the Com-  
pany's per-  
mission

### 34. LORD WELLESLEY ON INDIAN ADMINISTRATION, 1800.

(Governor-General in Council to Court of Directors, July 8, 1800).

The great pressure of the numerous and important duties now performed immediately by the Governor-General in Council, has induced us to take a review of the constitution of the Governor-General, considered as the supreme authority in India.

Governor-General in Council to be relieved of some duties

It has been his Lordship's object in this review to determine what duties now executed immediately by the Governor-General in Council ought still to be performed by him; what duties ought to be delegated to other establishments, and lastly to make a permanent provision for the due discharge of those duties which the Governor-General in Council must

necessarily retain, as well as of those which it has been deemed advisable he should relinquish.

In the discussion of these important questions we have not hesitated to consider the extensive and valuable possessions to the government of which the Company have succeeded, as a great Empire. To view those possessions in any other light, must, we are persuaded, always lead to the most erroneous conclusions as to the principles of policy by which they ought to be governed.

The early administration of the Company succeeded to the despotic power of the native princes.

Those princes, as in other despotic governments, united in their own persons the whole legislative, executive, and judicial powers of the State, and exercised them according to the dictates of their own discretion.

No form of Government could be so ill adapted to these countries when they became dependent possessions of the British Empire, subject to be governed by persons occasionally deputed from the Mother Country.

Experience of the evils attendant on this form of Government conducted by a delegated British administration, led to the modelling of the Government of Bengal, on principles drawn from the British constitution.

Government of Bengal modelled on British constitution

A distribution of the legislative, executive, and judicial powers of the state, analogous to that which forms the basis of the British Constitution, was made the foundation of the new constitution of the Government of Bengal.

Considerations, however, arising out of the nature of our situation in this country demanded that these fundamental principles of the British Constitution should be introduced with a variety of modifications.

The lines between these three authorities were distinctly drawn, but it was obviously necessary that the Governor-General in Council should exercise exclusively the entire legislative authority.

Legislation

But at the same time that we excluded our native subjects from all participation in the legislative authority, abundant security was afforded to them, that the exercise of that authority would always be directed to their happiness and benefit.

(i) Governor-General-in-Council

The confirmation of their ancient laws in all matters connected with their religious prejudices, or their domestic relations, formed one of the first acts of the Governor-General in Council under the new constitution.

(ii) Courts

Provision was also made for ascertaining the sense which the people might entertain of the laws and regulations enacted for the government of the country, by the authority given to the judges of all the Courts of judicature to propose such general or local laws as, from their intercourse with the natives in the administration of justice, might appear to them necessary to promote the public happiness and prosperity.

As an effectual security against every abuse of the legislative power vested in the Governor-General in Council, it was made a fundamental principle of the new constitution, that he shall print and publish every legislative Act in a form which renders him responsible to his country for the unjust or unwise exercise of that power.

Executive

The executive authority was of necessity also exclusively vested in the Governor-General in Council.

(i) Foreign policy

No check can be imposed on the Governor-General in Council in the exercise of this authority in the regulation of our connection with the foreign States of India. But as our own interest, and that of our subjects with regard to those connections are necessarily the same, they have the best security that the most effectual means will always be taken to protect the country from foreign enemies.

(ii) Internal government

With regard to all acts of the executive power as they relate to the internal government of the country, the people possess the same security against any infringement by this power of the rights and principles

which have been granted to them by the laws, as is enjoyed under the British Constitution.

It was judged advisable, however, to restrict the control over the executive authority to cases actually provided for by the regulations. But as legislative provisions are made for all cases not included in the existing laws as such cases arise, the discretionary power which the Governor-General in Council may now exercise in cases of that nature, must in progress of time entirely cease.

As constituting the Courts of Sudder Dewanny Adawult and the Nizamut, or the chief civil or criminal Courts, the Governor-General in Council also exercises a large portion of the judicial power. (iii) Judicial

The reasons which originally occasioned the continuance of the entire legislative and executive authority in the Governor-General in Council, are obviously of a permanent nature.

There is no change in our situation in this country, which can be supposed, in which it would be expedient to admit any part of our native subjects to participate in the legislative authority with the Governor-General in Council.

The same principle applies to the executive authority of the Governor-General in Council, as far as regards the relations of the British possessions with foreign states. It can never be expedient that our native subjects should be allowed to interfere in those relations, or that any local restrictions should be imposed on the Governor-General in Council, in the conduct of them. -

With regard to the executive authority of the Governor-General in Council, as far as relates to the internal government of the country, this authority can only be vested in him. But the nature of our situation affords additional reasons for subjecting the executive authority in this branch gradually to the complete controul of the law, in the same manner as that authority is restricted by the laws of the British constitution.

Indians cannot be allowed to share legislative and executive authority of Governor-General-in-Council

While our political security demands that the entire legislative and executive authority should continue to be vested exclusively in the Governor-General in Council agreeably to the principles of the existing constitution : it is at the same time a satisfaction to know, that under the checks which are imposed on the Governor-General in Council in the exercise of these powers the union of them in his hands, (notwithstanding the objections to which this union may be liable in theory) is perfectly compatible with the ends of good government.

Judicial duties of Governor-General-in-Council may be delegated There are no circumstances however connected with our political situation in this country, which require that the Governor-General in Council should continue to exercise any portion of the judicial authority.

It is equally necessary to the happiness of the people, to the prosperity of the country, and to the stability of the British Government, that such laws as the Governor-General in Council may sanction in his legislative capacity, should be administered with ability, integrity, impartiality and expedition.

All the provisions made by the British constitution for precluding the legislative and the executive powers of the state, from any interference in the administration of the laws, are not only applicable to the government of this country, but, if it were possible, demand to be strengthened.

An efficient controul may be exercised from England over the conduct of the Governor-General in Council, in his legislative capacity. But no effectual controul can be exercised over him in the administration of the laws, and he may render the laws altogether nugatory by abuses, omissions, or delays in their administration.

It is essentially necessary that the security of private rights and property should be rendered altogether independent of the characters of those who may be occasionally placed at the head of your affairs in this country. This however, can never be the case,



while the Governor-General in Council who makes the law, and whose acts in his executive capacity, as well as those of the long train of officers who exercise authority under him in that capacity also, constitute the chief courts which controul the general administration of justice.

No inconvenience can arise from divesting the Governor-General in Council of all immediate interference in the administration of the laws, while he has the power of altering at his pleasure the law itself.

These objections to the exercise of any judicial power by the Governor-General in Council, are founded on general and established principles of government ; but other considerations render this duty incompatible with the proper functions of the Governor-General in Council.

Why  
Governor-General-  
in-Council  
should be  
relieved of  
judicial  
duties ?

The administration of justice in open court, is one of the principal securities for its due administration.

The constant appearance of the Governor-General in Council in an open court of justice would be incompatible with that dignity which, to render him competent to the conduct of the government, it is essentially necessary that the person invested with the supreme executive and legislative power should maintain, not only in the estimation of the people immediately subject to his government, but also of the foreign powers.

The presence of the Governor-General in Council in open court, would prevent the pleading of causes with becoming freedom. No native pleader would venture to contest his opinions, and the will of the Governor-General, and not the law would be considered as the rule of decision.

As the Governor-General must necessarily be often unacquainted with the languages of the country, this circumstance alone would render it impracticable for him to preside at trials in open court, unless it should be determined that the trials should be conducted in English, and by English pleaders.

In consequence of these circumstances, the Courts of Sudder Dewanny Adawlut, and Nizamut Adawlut are held in the council chamber. Neither the parties nor their pleaders are in any cases present. The proceedings are translated into English, and read to the members of the Court who pass their decision, which the register records.

The necessity of making these translations constitutes the chief cause of the delay in the decision of the causes which are brought before the chief civil and criminal courts. The translations cannot however be dispensed with for the reasons above stated. They are also requisite for record and transmission to England, as they now constitute the only check on the Governor-General in Council in the administration of the law ; but for these considerations, no translations of the proceedings on trials would be necessary.

But there is another object, unconnected with any of the above considerations, which is of itself sufficient to establish the necessity of divesting the Governor-General in Council of the judicial authority now exercised by him.

A conscientious discharge of the duties of the Sudder Dewanny Adawlut, and the Nizamut Adawlut, would of itself occupy the whole time of the Governor-General in Council.

**Various duties of Sadr Dewani and Nizamut Adalats** The proper duties of these courts are not confined to the determination of the causes which are brought before them. It is also their duty to superintend the conduct of all the other courts, to watch over the general police of the country, and to frame for the consideration of the Governor-General in Council, new laws as cases may arise demanding further legislative provisions.

When your Honourable Court shall advert to the extent of your dominions, to their population, to their growing prosperity, and to the consequent multiplied concerns of individuals, it will at once be evident that it is physically impossible that the Governor-General in Council can ever dedicate that time and attention

to the duties of these courts, which must necessarily be requisite for their due discharge.

It is impossible to have the benefit of a regular and systematic government without numerous laws, and for the due administration of those laws, the necessary establishments must be provided.

Of the value of a system of government founded on these principles as connected with your permanent interests, a competent judgement may be formed by a comparison of the present state of your territories in Bengal, with that of your ancient possessions on the coast of Coromandel, as described in the able report of the Board of Revenue at Fort St. George, forwarded to your Honourable Court by this despatch.

These considerations have induced us to determine, under the sanction of the clause of the act of the year of the reign of his present Majesty, that the Governor-General, and the members of Council shall not constitute the Court of Sudder Dewanny Adawlut in future, but that distinct judges shall be appointed to preside by the Governor-General and the members of Council, as the judges of that court.

Separate judges to be appointed for Sadr Dewans and Sadr Nizamat Adalat

We have also determined, that the same judges shall constitute the Court of Nizamut Adawlut, with all the powers now exercised by the Governor-General and the members of Council, as judges of that court.

The adoption of this arrangement will establish the prosperity of your dominions in Bengal, on the most solid foundation. Your Honourable Court will yourselves be able to exercise the most effectual controul over the Governor-General in Council in his legislative capacity, as his acts printed and published come under your revision. His executive authority as far as regards the internal government, will be subject to the controul of the laws, and the due administration of the laws, will be secured by the courts appointed to administer them being rendered entirely distinct, both from the executive and legislative authority, at the same time that the conduct of the judges of the superior courts, will be subject to the most vigilant controul on the part of the executive power.

Merits of the suggested system

The necessity of divesting the Governor-General in Council of the exercise of any judicial authority at some future period was foreseen at the first establishment of the present constitution. It will accordingly appear, that throughout the code of regulations the powers of the Sudder Dewanny Adawlut and the Nizamut Adawlut are so framed, as to admit of these courts being at any time constituted in the manner now proposed. But the cautious spirit which will be found to pervade every part of that constitution, wisely left these judicial powers to be exercised by the Governor-General in Council, until circumstances should dictate the necessity of his relinquishing them.

The establishment of the new Courts of Sudder Dewanny Adawlut and Nizamut Adawlut, providing for the discharge of the judicial duties now exercised by the Governor-General in Council, the only point connected with the subject of this address which remains to be considered, is the permanent provision to be made for enabling the Governor-General in Council to execute the legislative and executive duties which are still to be performed by him.

**Legislative duties of Governor-General-in-Council** The duties of the Governor-General in Council in his legislative capacity, are first, the framing of such laws or regulations as may occur to him to be necessary for improving the internal government of the country. Secondly, the consideration of such laws or regulations as may be proposed to him by any of the Courts of Judicature, or other authorities empowered to propose regulations.

In a despotic government the will of the ruling power stands in the place of law ; but when it becomes the fundamental principle of a government, to be guided by written and defined laws, every case which occurs, for which no provision is made, and every defect discovered in the existing laws, calls for the interposition of the legislative authority.

Numerous cases now demand that interposition ; but it is unavoidably withheld, from the various avocations of the Governor-General in Council, rendering

it impossible to give his attention to the several cases, or defects, or to make the necessary legislative provisions for them.

The superintendence of this important duty, on the due performance of which depend the happiness of the people, the extent of your resources, and the stability of your empire, will in future devolve chiefly on the new Court of Sudder Dewanny Adawlut and Nizamut. It will be the province of the Governor-General in Council to determine on the expediency of adopting the regulations which may be submitted to him by these courts, or by the other authorities empowered to propose regulations.

The duties of the Governor-General in Council in his executive capacity consist of—first, his duties as exercising the executive authority of the government of the British possessions in India. Secondly, his duties as the chief representative of the Company in India, in their commercial capacity.

Executive  
duties of  
Governor-  
General-  
in-Council

The first mentioned duties must be considered, as they relate to the conduct of the relations between the British power in India, and Foreign States ; and secondly, as they are connected with the internal government of your own possessions.

The glorious termination of the late war in Mysore, and the events which preceded it, have not only widely extended your political relations, but have established the ascendancy of the British power over all the States of India.

The maintenance of this ascendancy, necessarily demands the constant and vigilant attention of the Governor-General in Council.

The public records afford abundant testimony, how great a proportion of the time of the Governor-General in Council must necessarily be occupied by this most important duty.

The executive duties of the Governor-General in Council as connected with the internal government of the British possessions of Bengal, comprise the management of the public revenue, the superintendence of the

general finances of India, the regulation of the army, and the infinite variety of miscellaneous business which falls under the cognizance of the executive authority in every government.

**Control of Governor-General in Council over Madras and Bombay** The general controul exercised by the Governor-General in Council over the civil and military affairs of the subordinate governments, forms another important branch of these executive duties.

The two subordinate governments may be considered with relation to the supreme government as dependent states. The nature of the controul exercised over those governments, corresponds in many material respects, with that exercised by the Crown, with regard to the American and West Indian possessions.

It is essential that this controul should be extended to all matters in any respect connected with the unity, strength and stability of the British power in India.

The various questions arising out of the settlement of our recent conquests, of our connection with the dependent power established in Mysore, and lastly, the introduction of the constitution of the internal Government of Bengal, into the British territories, subject to the Governments of Fort St. George and Bombay, demand at present a more than ordinary attention of the Governor-General in Council, to the affairs of those governments.

Another branch of the duties of the Governor-General in Council in his executive capacity, is the superintendence of the subordinate settlements, and of our acquisitions from the French and the Dutch.

**Commercial duties of Governor-General in Council** As the chief representative of the Company in their commercial capacity the Governor-General in Council has the immediate superintendence of their commercial concerns in Bengal, and exercises a general control over the provision of the investment at the other presidencies, including a considerable degree of attention to their affairs in China.

The establishment attached to the Governor-General in Council in his legislative and executive

capacity, for the conduct of these various and important duties under circumstances peculiarly arduous and critical, has hitherto consisted of a secretary, and four sub-secretaries. The assistants under these officers are necessarily incompetent to afford them any effectual aid, in their more important duties.

Secretariat  
of Governor-  
General-  
in-Council

From the constitution of these offices of sub-secretary, these offices were not acceptable to persons of any pretensions in the respective departments, either from their rank in the service, or from their talents. They have accordingly for the most part been filled by junior servants, necessarily incompetent to afford any efficient assistance in the execution of the duties of government.

It is of the greatest importance to the public interests, that the establishments of the several departments immediately connected with the legislative and executive capacity of the Governor-General in Council should be so constituted, as to ensure at the head of the respective departments, the assistance of men of ability, integrity and experience, competent to the due conduct of the ordinary duties of the government.

Establishments so constituted, will form a great check to negligence or misrule ; at the same time, that they will always be powerful instruments in the hands of those who are zealous in the promotion of the public interests.

The Governor-General in Council therefore determined to make the situations of the public officers, who are to be his instruments for the conduct of the government of the British possessions in India, offices of high honour, and of the first emolument.

This was the only mode of enabling the Governor-General in Council to command the services of men of the first talents and ability, in the respective departments.

As connected with the principle of relieving the Governor-General in Council from all unnecessary labour of detail, our attention has been drawn to the number of papers which it has been the practice for the Governor-General in Council to attest with his own

Governor-  
General-  
in-Council  
to be  
relieved of  
details

signature. Much of the time of the Governor-General in Council is occupied unnecessarily in the signature of these papers, and the despatch of the public business is often considerably impeded in obtaining his signature to them.

We have accordingly determined, that all public papers shall be authenticated by the signature of the secretary to the department. From this general rule however, we have of course excepted our addresses to your honourable Court, and to the subordinate Presidencies and all other papers, to which considerations of respect to superior authority, or other circumstances, may render it proper that the signatures of the Governor-General in Council should be affixed. Conformably to this determination, your honourable Court will find the sets of the public proceedings which are transmitted to you, attested by the secretaries of the respective departments, by order of Governor-General in Council, instead of being signed by the Governor-General and the members of Council.

In this review of the constitution of the supreme Government of the Company's possessions in India, it could not escape the Governor-General in Council, that the wisest system of government will but imperfectly answer its ends, unless means are at the same time taken for providing persons duly qualified for the conduct of the system.

Civil  
Service  
in Bengal

It would be useless to enter into any argument to prove that the same general qualifications necessary for the first political, judicial, financial and commercial stations in Europe, are equally requisite for the due discharge of the duties of similar situations in India.

Your honourable Court can yourselves form an adequate judgment how far your servants are in general competent to discharge these high offices. You know at what age they are sent from England, and what are at that period their qualifications for the offices to which they are destined. You are also apprized how far the occupations on which the first years of their residence in India are employed, are calculated to give them these qualifications.



Your servants are nominated to the highest stations of civil government, without any test of their possessing the requisite qualifications for the discharge of the functions of these offices. No such test could now indeed be required, none having been prescribed, and no means having been afforded to individuals of acquiring the necessary qualifications for public stations.

Defects of  
the Civil  
Service

In consequence of this serious defect in the system of your government, it has been the practice to transfer your servants from one line of the service to another, with little regard to the qualifications for the offices for which they have been selected. No imputation attaches in this respect to your governments. Among those from whom the selection was to be made, there could not possibly exist any material ground of preference.

It is far from our intention in these observations to reflect on the general talents, character, or integrity of your servants on this establishment. Whatever may be their deficiencies, they are not ascribable to themselves, but to the nature of the service. Great exertions indeed have been made by individuals, and it affords matter of astonishment, that under such disadvantages they should have acquitted themselves with so much ability and success, in situations which in Europe are to be attained only by regular and systematic education and laborious exertions.

It is obvious that an education exclusively European or Indian, would not qualify your servants for the situations which they are destined to fill. The foundation of their education must be laid in England, and it must be completed systematically after their arrival in India.

The Governor-General in Council has, therefore, determined to found an establishment at this Presidency, of the nature of a collegiate institution,<sup>1</sup> for the purpose of enabling the servants of the Company to perfect themselves in those acquirements, which form

Fort  
William  
College

<sup>1</sup> For details about Fort William College, see A. K. Ghoshal, *Civil Service in India*.

the necessary qualifications for the different lines of the service, in which they may choose to engage. It is our intention that the junior servants shall be attached to this institution for a certain period after their arrival, instead of being employed in the unprofitable occupation of transcribing papers, and abandoned to the dictates of their own discretion, both with regard to their morals and acquirements.

An institution of this description will ensure a succession of men, equal to the support of the great interests of the Company, and of the British nation in India.

Civil  
Service  
in Madras  
and  
Bombay

The above observations with regard to the education and qualifications of your civil servants in Bengal, for the conduct of civil government apply with equal force to your servants under the other Presidencies. Under our instructions to Fort St. George, of the 31st December last, and the orders which we have it in contemplation to issue to Bombay, the civil servants on those establishments will be shortly called upon to exercise the same important functions, as the civil servants on Bengal.

Whether it will be advisable to bring the junior servants attached to the Establishments of Fort St. George and Bombay to Bengal in the first instance, in order to enable them to acquire the necessary qualifications here, or to found institutions for the purpose at those Presidencies, is a question which will demand further consideration.

When the details of the plan of the intended institution shall have been arranged, we shall lose no time in forwarding it to your honourable Court. As it cannot fail to redound equally to the honour and happiness of the civil servants, as well as to promote the solid and substantial interests of the Company, and of the nation, we feel the strongest conviction that it will meet your approbation.

Religious  
establish-  
ments

As connected with the subject of forming the characters of your servants, we cannot omit to notice the state of your religious establishments in this country.

The sentiments which have occurred to the Governor-General regarding these establishments, will hereafter form the subject of a separate address to your honourable Court from his Lordship.

It is of the last importance to the stability of the British power in India, that these establishments should be placed on the most respectable footing. Such establishments will cherish in the minds of the servants of the Company, a sense of moral duty, and teach those who fill important stations, that the great public duties which they are called upon to execute in India, are not of a less sacred nature than the duties of similar situations in their own country. In proportion as persons holding such situations are brought to entertain these high and worthy notions of their functions and to consider themselves as more especially accountable to that Being, whose instruments they are in the government of a large portion of the human race, in the same degree will they discharge their duties with zeal, diligence and integrity.

We feel that it would not only be impolitic, but highly immoral to suppose that Providence has admitted of the establishment of the British power over the finest provinces of India, with any other view than that of its being conducive to the happiness of the people, as well as to our national advantage.

British  
rule in  
India

In proportion as the policy and conduct of the British Government shall correspond with these beneficent intentions, we are persuaded that its power will acquire increasing stability.

Impressed with a deep sense of the justice and wisdom of these principles, we are confident that it will always be equally for the interests of the Company, and of the British nation, that they should constitute the basis of the system of our Indian Government; and that consistently with the considerations of a well regulated economy, we ought never to withhold that portion of the resources derived from these valuable possessions, which may be found indispensably necessary for dispensing to them the invaluable blessings of civil order and good government.

**35. LORD WELLESLEY ON CIVIL SERVICE,****1800.****(Note, July 10, 1800).**

Extent of British Empire in India      The British possessions in India now constitute one of the most extensive and populous empires in the world. The immediate administration of the government of the various provinces and nations composing this empire is principally confided to the European civil servants of the East India Company. Those provinces, namely, Bengal, Behar, Orissa, and Benares, the Company's Jaghire in the Carnatic, the northern Circars, the Baramahal, and other districts ceded by the peace of Seringapatam, in 1792, which are under the more immediate and direct administration of the European civil servants of the Company, are acknowledged to form the most opulent and flourishing parts of India; in which property, life order, and religious liberty are more secure, and the people enjoy a larger portion of the benefits of good government, than any other country in this quarter of the globe. The duty and policy of the British Government in India therefore require, that the system of confiding the immediate exercise of every branch and department of the government to Europeans, educated in its own service, and subject to its own direct control, should be diffused as widely as possible, as well with a view to the stability of our own interests, as to the happiness and welfare of our native subjects. This principle formed the basis of the wise and benevolent system introduced by Lord Cornwallis, for the improvement of the internal government of the provinces immediately subject to the Presidency of Bengal.

Mercantile designations inapplicable to Company's servants      In proportion to the extension of this beneficial system, the duties of the European civil servants of the East India Company are become of greater magnitude and importance, the denominations of writer, factor, and merchant, by which the several classes of the civil service are still distinguished, are now utterly inapplicable to the nature and extent of the duties

discharged, and of the occupations pursued by the civil servants of the Company.

To dispense justice to millions of people of various languages, manners, usages and religions ; to administer a vast and complicated system of revenue throughout districts equal in extent to some of the most considerable kingdoms in Europe ; to maintain civil order in one of the most populous and litigious regions of the world ; these are now the duties of the larger proportion of the civil servants of the Company. The senior merchants composing the five Courts of Circuit and Appeal under the Presidency of Bengal exercise in each of those Courts a jurisdiction of greater local extent, applicable to a larger population, and occupied in the determination of causes infinitely more intricate and numerous than that of any regularly constituted courts of justice in any part of Europe. The senior or junior merchants, employed in the several magistracies and Zillah Courts, the writers or factors filling the stations of registrars and assistants to the several courts and magistrates, exercise in different degrees, functions of a nature, either purely judicial, or intimately connected with the administration of the police, and with the maintenance of the peace and good order of their respective districts. Commercial or mercantile knowledge, is not only unnecessary throughout every branch of the judicial department but those civil servants who are invested with the powers of magistracy, or attached to the judicial department in any ministerial capacity, although bearing the denomination of merchants, factors or writers, are bound by law, and by the solemn obligation of an oath, to abstain from every commercial and mercantile pursuit ; the mercantile title which they bear, not only affords no description of their duty, but is entirely at variance with it.

Duties of  
Civil  
Servants :

(1) Judicial

The pleadings in several courts, and all important judicial transactions, are conducted in the native languages. The law which the Company's judges are bound to administer throughout the country is not the law of England, but that law to which the natives

had long been accustomed under their former sovereigns, tempered and mitigated by the voluminous regulations of the Governor-General in Council, as well as by the general spirit of the British constitution.

Heavy duties of judicial officers These observations are sufficient to prove, that no more arduous or complicated duties of magistracy exist in the world, no qualifications more various, or more comprehensive, can be imagined than those which are required from every British subject, who enters the seat of judgment within the limits of the Company's empire in India.

- (2) Revenue To the administration of the revenue, many of the preceding observations will apply with equal force; the merchants, factors and writers, employed in this department also, are bound by law to abjure the mercantile denomination appropriated to their respective classes in the Company's service; nor is it possible for a collector of the revenue, or for any civil servant employed under him, to discharge his duty with common justice, either to the state, or to the people, unless he shall be conversant in the language, manners, and usages of the country; and in the general principles of the law, as administered in the several courts of justice. In addition to the ordinary judicial and
- (3) Executive  
(4) Military  
(5) Legislative
- executive functions of the Judges, Magistrates, and Collectors, the Judges and Magistrates occasionally act in the capacity of Governors of their respective districts, employing the military, and exercising other extensive powers. The Judges, Magistrates, and Collectors, are also respectively required by law to propose, from time to time, to the Governor-General in Council, such amendments of the existing laws, or such new laws as may appear to them to be necessary for the welfare and good government of their respective districts. In this view the civil servants employed in the departments of Judicature and Revenue, constitute a species of subordinate legislative council to the Governor-General in Council, and also form a channel of communication, by which the Government ought to be enabled, at all times to ascertain the wants and wishes of the people. The remarks applied to these

two main branches of the civil service, namely, those of Judicature and Revenue, are at least equally forcible in their application to those branches which may be described under the general terms of the Political and Financial Departments, comprehending the offices of Chief Secretary, the various stations in the Secretary's office, in the Treasury, in the office of Accountant-General, together with all the public officers employed in conducting the current business at the seat of Government. To these must be added the Diplomatic branch, including the Secretary in the political department, and the several residencies at the Courts of our dependent and tributary Princes, or of other native powers of India.

(6) Political  
(7) Financial

(8) Diplomatic

It is certainly desirable, that all these stations should be filled by the civil servants of the Company : it is equally evident, that qualifications are required in each of these stations, either wholly foreign to commercial habits, or far exceeding the limits of a commercial education.

Even that department of this empire, which is denominated exclusively commercial, requires knowledge and habits different, in a considerable degree, from those which form the mercantile character in Europe ; nor can the Company's investment ever be conducted with the greatest possible advantage and honour to themselves, or with adequate justice to their subjects, unless their commercial agents shall possess many of the qualifications of statesmen, enumerated in the preceding observations. The manufacturers, and other industrious classes, whose productive labour is the source of the investment, bear so great a proportion to the total population of the Company's dominions, that the general happiness and prosperity of the country must essentially depend on the conduct of the commercial servants employed in providing the investment: their conduct cannot be answerable to such a charge, unless they shall be conversant in the native languages, and in the customs and manners of the people, as well as in the laws by which the country is governed. The peace, order, and welfare of whole provinces may be

(9) Commercial

materially affected by the malversations, or even by the ignorance and errors of a commercial resident, whose management touches the dearest and most valuable interests, and enters into the domestic concerns of numerous bodies of people, active and acute from habitual industry, and jealous of any act of power injurious to their properties, or contrary to their prejudices and customs.

Changed  
position of  
Company's  
Civil  
Servants

The civil servants of the English East India Company, therefore, can no longer be considered as the agents of a commercial concern. They are, in fact, the ministers and officers of a powerful sovereign; they must now be viewed in that capacity, with reference, not to their nominal, but to their real occupations. They are required to discharge the functions of Magistrates, Judges, Ambassadors, and Governors of provinces, in all the complicated and extensive relations of those sacred trusts and exalted stations, and under peculiar circumstances, which greatly enhance the solemnity of every public obligation, and aggravate the difficulty of every public charge. Their duties are those of statesmen in every other part of the world, with no other characteristic differences than the obstacles opposed by an unfavourable climate, by a foreign language, by the peculiar usages and laws of India, and by the manners of its inhabitants. Their studies, the discipline of their education, their habits of life, their manners and morals should, therefore, be so ordered and regulated as to establish a just conformity between their personal consideration, and the dignity and importance of their public stations, and to maintain a sufficient correspondence between their qualifications and their duties. Their education should be founded in a general knowledge of those branches of literature and science which form the basis of the education of persons destined to similar occupations in Europe. To this foundation should be added an intimate acquaintance with the history, languages, customs and manners of the people of India, with the Mahommedan and Hindoo codes of law and religion, and with the political and commercial interests

Special  
education  
and  
training  
of Civil  
Servants  
required



and relations of Great Britain in Asia. They should be regularly instructed in the principles and system which constitute the foundation of that wise code of regulations and laws enacted by the Governor-General in Council for the purpose of securing to the people of this empire the benefit of the ancient and accustomed laws of the country, administered in the spirit of the British constitution. They should be well informed of the true and sound principles of the British constitution, and sufficiently grounded in the general principles of ethics, civil jurisprudence, the law of nations, and general history, in order that they may be enabled to discriminate the characteristic differences of the several codes of law administered within the British Empire in India, and practically to combine the spirit of each in the dispensation of justice, and in the maintenance of order and good government. Finally, their early habits should be so formed, as to establish in their minds such solid foundations of industry, prudence, integrity, and religion, as should effectually guard them against those temptations and corruptions with which the nature of this climate, and the peculiar depravity of the people of India, will surround and assail them in every station, especially upon their first arrival in India. The early discipline of the service should be calculated to counteract the defects of the climate and the vices of the people, and form a natural barrier against habitual indolence, dissipation, and licentious indulgence; the spirit of emulation, in honourable and useful pursuits, should be kindled and kept alive by the continual prospect of distinction, and reward, of profit, and honour; nor should any precaution be relaxed in India, which is deemed necessary in England, to furnish a sufficient supply of men qualified to fill the high offices of the State with credit to themselves and with advantage to the public. Without such a constant succession of men in the several branches and departments of this Government, the wisdom and benevolence of the law must prove vain and inefficient. Whatever course and system of discipline and study may be deemed requisite in

Discipline  
Civil  
Servants  
should pass  
through

England to secure an abundant and pure source for the efficient supply of the public service, the peculiar nature of our establishments in the East, (so far from admitting any relaxation of those wise and salutary rules and restraints,) demands that they should be enforced with a degree of additional vigilance and care, proportioned to the aggravated difficulties of the civil service, and to the numerous hazards surrounding the entrance of public life in India.

**Existing system** It is unnecessary to enter into any examination of facts to prove, that no system of education, study, or discipline, now exists, either in Europe or in India, founded on the principles, or directed to the objects described in the preceding pages ; but it may be useful in this place to review the course through which the

**Careers of Company's Civil Servants** junior civil servants of the East India Company now enter upon the important duties of their respective stations, to consider to what degree they now possess or can attain any means of qualifying themselves sufficiently for those stations, and to examine whether the great body of the civil servants of the East India Company, at any of the Presidencies, can now be deemed competent to discharge their arduous and comprehensive trusts in a manner correspondent to the interests and honour of the British name in India, or to the prosperity and happiness of our native subjects.

- (i) **Age of entering service** The age at which the writers usually arrive in India is from sixteen to eighteen ; their parents or friends in England, from a variety of considerations, are naturally desirous, not only to accelerate the appointment at home, but to despatch the young men to India at the earliest possible period. Some of these young men have been educated with an express view to the civil service in India, on principles utterly erroneous, and inapplicable to its actual condition ; conformably to this error, they have received a limited education, confined principally to commercial knowledge, and in no degree extended to those liberal studies which constitute the basis of education at public schools in England. Even this limited course of study
- (ii) **Limited education**

is interrupted at the early period of fifteen or seventeen years.

It would be superfluous to enter into any argument to demonstrate the absolute insufficiency of this class of young men to execute the duties of any station whatever in the civil service of the Company beyond the menial, laborious, unwholesome and unprofitable duty of a mere copying-clerk. Those who have received the benefits of a better education, have the misfortune to find the course of their studies prematurely interrupted at the critical period when its utility is first felt, and before they have been enabled to secure the fruits of early application.

Both descriptions of young men, those whose education has been originally erroneous and defective, and those, the early promise of whose studies has been unseasonably broken, once arrived in India, are equally precluded from the means, either of commencing a new situation, or of prosecuting that course which had been prematurely interrupted. Not only no encouragement is offered by the present constitution and practice of the civil service to any such pursuits, but difficulties and obstacles are presented by both, which render it nearly impossible for any young man, whatever may be his disposition, to pursue any systematic plan of study, either with a view to remedy the defects, or to improve the advantages of his former education.

On the arrival of the writers in India, they are either stationed in the interior of the country, or employed in some office at the Presidency.

If stationed in the interior of the country, they are placed in situations which require a knowledge of the language and customs of the natives; or of the regulations and laws; or of the general principles of jurisprudence; or of the details of the established system of revenue; or of the nature of the Company's investment; or of many of these branches of information combined. In all these branches of knowledge, the young writers are totally uninformed. They are consequently unequal to their prescribed duties. In some cases, their superior in office experiencing no

(iii) Work  
in interior  
of the  
country

benefit from their services, leaves them unemployed. In this state many devote their time to those luxuries and enjoyments which their situation enables them to command, without making any effort to qualify themselves for the important stations to which they are destined. They remain sunk in indolence, until, from their station in the service, they succeed to offices of high public trust.

Bad  
effects  
of work  
in the  
interior  
of the  
country

Positive incapacity is the necessary result of these pernicious habits of inaction ; the principles of public integrity are endangered, and the successful administration of the whole Government exposed to hazard. This has been the unhappy course of many, who have conceived an early disgust in provincial stations against business, to which they have found themselves unequal, and who have been abandoned to the effects of despondency and sloth.

Even the young men whose dispositions are the most promising, if stationed in the interior of the country at an early period after their arrival in India, labour under great disadvantages. They also find themselves unequal to such duties as require an acquaintance with the languages, or with the branches of knowledge already described. If intensely employed in the subordinate details of office, they are absolutely precluded from reviving any former acquirements, or from establishing those foundations of useful knowledge indispensably necessary to enable them hereafter to execute the duties of important stations with ability and credit. Harassed with the ungrateful task of transcribing papers and accounts, or with other equally fatiguing and fruitless labours of a copying-clerk or index-maker, their pursuit of useful knowledge cannot be systematic ; their studies must be desultory and irregular, and their attention to any definite pursuit is still more distracted by the uncertainty of the nature of those employments to which they may hereafter be nominated. No course of study having been pointed out by public institution, no selection prescribed by authority of the branches of knowledge appropriated to each department and class of the service, diligence

is lost for want of a guide, and the most industrious are discouraged by the apprehension, that their studies may prove fruitless, and may frustrate instead of promoting their advancement in the public service.

When their rank in the service has entitled them to succeed to offices of importance, the current duties of those offices necessarily engross their whole attention. It is then too late to revert to any systematic plan of study with a view to acquire those qualifications, of which, in the ordinary discharge of their official functions, they feel the hourly want. If, at this late season, they should make an effort to acquire knowledge, it must be sought by the interruption of their current business, to the detriment of the public interests, and to the inconvenience or injury of the individuals subject to their authority.

No systematic study possible for civil servants on duty

With respect to the young men attached to offices at the Presidency, their duty consists chiefly in transcribing papers. This duty, if pursued with the utmost diligence and assiduity, affords little knowledge of public affairs, is often prejudicial to health, and would be better performed by any native or Portuguese writer. They attain no distinct knowledge of the public records ; because they pursue no regular course or reading, examining, or comparing the documents which compose those records ; they have, indeed, scarcely time to understand and digest those papers which they are employed to transcribe ; their acquaintance even with the current affairs of the Government must be limited and partial, and must rather tend to confuse than to instruct their minds. At the expiration of the period during which they usually remain in these situations at the Presidency, their knowledge of public business is necessarily superficial and incorrect. Having had little intercourse with the natives, these young men are in general extremely deficient in the knowledge of the language of the country. In the meanwhile their close and laborious application to the hourly business of transcribing papers has been an insuperable obstacle to their advancement in any other branch of knowledge, and at the close of two or three years, they have lost

(iv) Work at the Presidency

Bad effects of work at the Presidency

the fruits of their European studies, without having gained any useful knowledge of Asiatic literature or business. Those whose dispositions lead them to idleness and dissipation, find greater temptations to indulgence and extravagance at the Presidency than in the provinces ; many instances occur in which they fall into irretrievable course of gaming and vice, and totally destroy their health and fortunes. Some succeed, in the ordinary progress of the service, to employments, in which their incapacity or misconduct becomes conspicuous to the natives, disgraceful to themselves and to the British name, and injurious to the State.

No proper supervision over young civil servants

All these descriptions of young men, upon their first arrival in India, are now exposed to a disadvantage, the most perilous which can be encountered at an early period of life. Once landed in India, their studies, manners, morals, expenses or conduct are no longer subject to any degree of regulation or direction. No system is established for their guidance, improvement, or restraint ; no authority has been constituted with either the duty or power of enforcing any such system ; and they are abandoned, at the age of sixteen or eighteen, with affluent incomes to pursue their own inclinations, without the superintendence or control of parent, guardian, or master, often without a friend to advise or admonish, or even to instruct them in the ordinary details and modes of an Indian life.

The practice of consigning the young writers to the care of friends resident in India, affords no adequate remedy to this evil. Those friends are often incompetent to the arduous and delicate task imposed upon them ; and it frequently happens that they may be so far removed from the spot at which the young man may be stationed by the Government, that years may elapse before he may have been able even to see the person appointed by his European friends to superintend his introduction into India.

In earlier periods of our establishment, when the annual incomes of the civil servants were of a more fluctuating nature, and derived from sources more vague and indefinite, the tables of the senior servants

were usually open to those recently arrived from Europe ; and the young writers, upon their first landing in India, were frequently admitted and domiciliated in the families established at the Presidency or in the provinces.

The objections to this loose and irregular system are numerous and obvious. Without entering upon that topic, it is sufficient to observe, that the definite and regular sources of profit, established in the civil service by Lord Cornwallis, have occasioned a material alteration in the economy of every private family among the civil servants.

Incomes being limited and ascertained, and no other source of emolument now existing beyond the annual savings from the regulated salaries, the tables of the civil servants can no longer be open to receive the numerous body of writers annually arriving from Europe ; still less can these young men be generally admitted to reside habitually in families of which the annual expenses are now necessarily restrained within certain and regular bounds.

Effect of  
curtailing  
income  
of civil  
servants

Many of the young men, on their first arrival, are, therefore, compelled to support the expense of a table ; the result of this necessity is obvious, and forms one leading cause of expense and dissipation.

Under all these early disadvantages, without rule or system to direct their studies ; without any prescribed object of useful pursuit connected with future reward, emolument, or distinction ; without any guide to regulate, or authority to control their conduct, or to form, improve, or preserve their morals ; it is highly creditable to the individual characters of the civil servants of the East India Company, that so many instances have occurred in various branches and departments of the civil service at all the Presidencies, of persons who have discharged their public duties with considerable respect and honour.

(v) Bad  
effects of  
early  
career

It has been justly observed, that all the merits of the civil servants are to be ascribed to their own characters, talents, and exertions while their defects must be imputed to the constitution and practice of

the service, which have not been accommodated to the progressive changes of our situation in India, and have not kept pace with the growth of this empire, or with the increasing extent and importance of the functions and duties of the civil servants.

Study of  
languages  
in Bengal

The study and acquisition of the languages have, however, been extended in Bengal, and the general knowledge and qualifications of the civil servants have been improved. The proportion of the civil servants in Bengal, who have made a considerable progress towards the attainment of the qualifications requisite in their several stations, appears great, and even astonishing, when viewed with relation to the early disadvantages, embarrassments, and defects of the civil service. But this proportion will appear very different when compared with the exigencies of the State, with the magnitude of these provinces, and with the total number of the civil servants, which must supply the succession to the great offices of the Government. It must be admitted that the great body of the civil servants in Bengal is not at present sufficiently qualified to discharge the duties of the several arduous stations in the administration of this empire ; and that it is peculiarly deficient in the judicial, fiscal, financial, and political branches of the Government.

Madras and  
Bombay  
Civil  
Services  
more  
defective  
than that  
of Bengal

The state of the civil services of Madras and Bombay is still more defective than that of Bengal. Various causes have concurred to aggravate, in an extreme degree, at both those Presidencies all the defects existing in the civil service of Bengal, while many circumstances peculiar to those Presidencies have favoured the growth of evils at present unknown in this. The condition of the writers, on their first arrival at either of the subordinate Presidencies, is still more destitute, and more exposed to hazard, than at Calcutta.

Study of  
languages  
in Madras  
and  
Bombay

The study or acquisition of the languages, and of other necessary attainments, has not been extended in the civil service at Madras or Bombay to any considerable degree. To this remark, eminent and meritorious individual exceptions exist in the civil service at both



subordinate Presidencies ; but those exceptions are not sufficiently numerous to constitute a general rule. But whatever may be the actual condition of the civil service in its superior classes at any of the Presidencies, if the arduous duties of that service have been justly defined in the preceding pages, if the qualifications requisite for their discharge have been truly described, if the neglected and exposed condition of the early stages of the service has not been exaggerated, it must be admitted, that those stages of the service require additional safeguards, and a more effectual protection. The extraordinary exertions of individual diligence, the partial success of singular talents, or of peculiar prudence and virtue, constitute no rational foundation of a public institution, which should rest on general comprehensive and uniform principles. If the actual state of the higher classes of the civil service were such as to justify a confidence in the general competency of the civil servants to meet the exigencies of their duty, the necessity of correcting the evils stated in the preceding pages would still remain, unless the facts alleged could be disproved. It would still be a duty incumbent on the Government to remove any obstacles tending to embarrass or retard the progress of their servants in attaining the qualifications necessary for their respective stations. The Government is not released from this duty by the extraordinary, or even general exertion of those servants to surmount the early difficulties of the first stages of the service. If the good Government of this empire be the primary duty of its sovereign, it must ever be a leading branch of that duty to facilitate to the public officers and ministers the means of qualifying themselves for their respective functions. The efficiency of the service cannot wisely or conscientiously be left to depend on the success of individual or accidental merit, struggling against the defects of established institutions. A due administration of our affairs can alone be secured by the constant effect of public institutions, operating in a regular and uninterrupted course upon the various characters, talents, and acquirements of individuals.

Comprehensive system of correcting defects necessary

The nature of our establishments should furnish fixed and permanent means for the education of the youth of India; the Government should be enabled to select and train a body of officers who will be able to meet the exigencies of our service.

From these remarks may be deduced the indispensable necessity of providing some efficient and speedy remedy for the defects in the education of the young men destined to the civil service in India. The nature of that remedy will afford matter of serious discussion.

Possible  
criticism  
of plan of  
reform :

It may, however, be useful, previously to that discussion to advert to a general topic of argument, which may possibly be adduced to disprove the necessity of any new institution for the improvement of the civil service of the East India Company. It may be contended, that this service, through a long period of years, and in the course of various changes and chances, has always furnished men equal to the exigency of the occasion ; that servants of the Company have never been wanting to conduct to a happy issue the numerous revolutions which have taken place in the affairs of the Company in India ; and that these eminent personages have ultimately fixed the British empire in India on the most solid foundations of glory, wealth, and power. Why, therefore, should we apprehend, that

Why  
should  
we change  
a system  
that has  
faced so  
many  
dangers  
successfully ?

this source, hitherto so fruitful and furnishing so abundant a supply of virtue and talents, will fail in the present age, and prove insufficient to the actual demands of our interests in this quarter of the globe ? The answer to this topic of argument is obvious. Extraordinary combinations of human affairs, wars, revolutions, and all those unusual events which form the marked features and prominent characters of the history of mankind, naturally disclose talents and exertions adapted to such emergencies. That the civil or military service of the East India Company has supplied persons calculated to meet all the wonderful revolutions of affairs in India, is a circumstance not to be attributed to the original or peculiar constitution of either service at any period of time. That constitution has undergone repeated alterations at the suggestion, and under

**INDIAN CONFIDENTIAL**

the direction of the great machine which has produced it; and it has still been found necessary to exert the most vigilant and constant supervision over its movements, and the most judicious management of its resources. The Indian Empire is a vast and complex system, and its administration is a task of the highest importance. It is a task which requires the most able and most experienced statesmen, and the most efficient machinery. It is a task which requires the most constant and most vigilant supervision, and the most judicious management of its resources. The Indian Empire is a vast and complex system, and its administration is a task of the highest importance. It is a task which requires the most able and most experienced statesmen, and the most efficient machinery. It is a task which requires the most constant and most vigilant supervision, and the most judicious management of its resources.

## Aim of British rule

The military establishments of this empire form no part of the subject of the present enquiry. It may be sufficient to observe in this place, that their extent,

Wanted  
good  
adminis-  
trators

and the spirit in which they require to be governed, must correspond with the magnitude of the empire, and with the general character of our civil policy. In the civil service, we must now seek, not the instruments by which kingdoms are overthrown, revolutions accomplished, or wars conducted, but an inexhaustible supply of useful knowledge, cultivated talents, and well ordered and disciplined morals. These are the necessary instruments of a wise and well regulated Government. These are the genuine and unfailing means of cultivating and improving the arts of peace ; of diffusing affluence and happiness, willing obedience, and grateful attachment over every region and district of this vast empire ; and of dispensing to every class and description of our subjects the permanent benefits of secure property, protected life, undisturbed order, and inviolate religion. It is not the nature of these inestimable blessings to spring from a turbid source, or to flow in a contracted and irregular channel.

The early education of the civil servants of the East India Company is the source from which will ultimately be derived the happiness or misery of our native subjects ; and the stability of our Government will bear a due proportion to its wisdom, liberality, and justice.

From the preceding discussion, it appears, that the actual state of the Company's civil service in India is far removed from perfection or efficiency, and that the cause of this defect is to be found principally, if not exclusively, in the defective education of the junior civil servants, and in the insufficient discipline of the early stages of the service. The facts, which have been reviewed in the course of this discussion, furnish the main principles on which an improved system of education and discipline may be founded with a view to secure the important ends of such an institution.

Defects of  
present  
system

The defects of the present condition of the civil service may be comprised under the following heads :

First, An erroneous system of education in Europe confined to commercial and mercantile studies.

Secondly, The premature interruption of a course of study judiciously commenced in Europe.

Thirdly, The exposed and destitute condition of young men on their first arrival in India, and the want of a systematic guidance and established authority to regulate and control their moral and religious conduct in the early stages of the service

Fourthly, The want of similar system and authority to prescribe and enforce a regular course of study, under which the young men upon their arrival in India might be enabled to correct the errors, or to pursue and confirm the advantages of their European education, and to attain a knowledge of the languages, laws, usages and customs of India, together with such other branches of knowledge, as are requisite to qualify them for their several stations.

Fifthly, The want of such regulations as shall establish a necessary and inviolable connection between promotion in the civil service, and the possession of those qualifications requisite for the due discharge of the several civil stations.

It is obvious, that an education exclusively European, or Indian, would not afford an adequate remedy for such of these defects, as relate to the morals and studies of the East India Company's servants, and would not qualify them for the discharge of duties of a mixed and complicated nature, involving the combined principles of Asiatic and European policy and government. Their education must therefore be of a mixed nature, its foundation must be judiciously laid in England, and the superstructure systematically completed in India.

Wellesley's  
plan of  
reform

An important question may arise, with respect to the proportion of time to be employed in that part of the education of the junior civil servants, which should be appropriated to England; and completed previously to their departure for India. It may be contended, that many of the enumerated evils may be precluded by not allowing the writers to proceed to India until they shall have reached a more advanced age, than that at which they now usually embark, and by requiring

Period of  
education  
of civil  
servants  
in Europe

them to undergo examinations in England, for the purpose of ascertaining their proficiency in the branches of knowledge necessary to the discharge of their duties in India.

Difficulties in lengthening the period of study in Europe

To this arrangement various objections of a private, but most important nature, will arise in the mind of every parent, who may have destined his children for India. To attain any considerable proficiency in the course of education and study described in this paper, must necessarily require the detention of the student in Europe to the age of 20 or 22 years ; many parents could not defray the expense of such an education in England, even if the other means of prosecuting it now existed, or could hereafter be provided at any school or college at home.

Other objections of a private nature might be stated against this plan ; but those which are founded on public considerations appear to be absolutely insurmountable. It is a fundamental principle of policy in the British Establishments in the East Indies, that the views of the servants of the Company should terminate in the prospect of returning to England, there to enjoy the emoluments arising from a due course of active and honourable service in India.

Were the civil servants, instead of leaving England at the age of sixteen or seventeen, to be detained until the age of twenty or two-and-twenty ; a great proportion of them must abandon all hope of returning with a moderate competence to their native country.

Remaining in England to this advanced age, many would form habits and connections at home, not to be relinquished at that period of life without great reluctance ; and few would accommodate themselves with readiness and facility to the habits, regulations and discipline of the service in India.

While these causes would render the civil servants intractable instruments in the hands of the Government of India, the regular progress through the service would also be retarded. Twenty-five years may be taken as the period within which a civil servant may

regularly acquire, with proper habits of economy, an independent fortune in India. Upon this calculation, before the most successful could hope to be in a situation to return to England, they would have attained an age, when many of the powerful affections and inducements, which now attract the servants of the Company to return to their native country, would be greatly weakened if not entirely extinguished.

Civil  
Servants  
must be  
induced to  
return home  
after service  
in India

At that age, many from necessity, and many probably from choice, would establish themselves permanently in India. It is unnecessary to detail the evil consequences which would result to the British interests in India, were such an habit to become general in the civil service.

Detention in England to the age of twenty or twenty-two years would certainly afford the writers an opportunity of advancing their knowledge in the necessary branches of European study; but within that period of time, even in those branches, it could scarcely be completed; especially in the important sciences of general ethics and jurisprudence (for how few understandings are equal to such a course of study previously to the age of twenty,) and it would be entirely defective in the essential point of connecting the principles of those sciences with the laws of India, and with the manners and usages of its inhabitants. No establishment formed in England could give a correct<sup>1</sup> practical knowledge of the languages, laws and customs of India, of the peculiar habits and genius of the people, of their mode of transacting business, and of the characteristic features of their vices or virtues. These most essential acquirements would, therefore, remain to be attained after the arrival of the student in India, at an age when the study of languages is attended with additional difficulties, when any prescribed course of study, when any systematic discipline, or regular restraint becomes irksome, if not intolerable. As the East India Company's servants would arrive in India at a period of life too far

Education  
in India  
can alone  
familiarise  
civil servants  
with Indian  
languages  
and ideas

<sup>1</sup>Sir W. Jones was not intelligible to the natives of India, when he arrived at Calcutta, in any of the oriental languages.

advanced to admit of subjection to any system of public discipline or control, they must necessarily be left to the dictates of their own discretion with regard to whatever part of their knowledge had been left incomplete in Europe.

Question of  
income of  
civil  
servants

The wants and expenses of individuals arriving in India at the age of twenty or twenty-two years would greatly exceed the scale of the public allowances to the junior servants. At this age no restraint could be applied in India to their moral conduct, for the purpose of protecting them against the peculiar depravities incident to the climate, and to the character of the natives.

From the early age at which the writers are now usually sent to India, opportunity is afforded to the government on the spot of obtaining a knowledge of the characters of individuals, before they become eligible to stations of trust and importance. Of this advantage the government would be in a great degree deprived, if the East India Company's servants were all detained in England until the age of twenty or twenty-two; this inconvenience would prove nearly an insurmountable impediment to the important and necessary rule of selecting for public office, those best qualified to discharge its duties with propriety and effect.

Civil  
Servants  
must  
come  
to India  
at early  
age

The junior civil servants must, therefore, continue to embark for India at the age of fifteen or sixteen, that they may be tractable instruments in the hands of the government of the country; that their morals and habits may be duly formed and protected by proper safeguards against the peculiar nature of the vices and characteristic dangers of Indian society; that they may be enabled to pass through the service before the vigour of life has ceased, and to return with a competent fortune to Europe, while the affections and attachments which bind them to their native country, continue to operate with full force; and lastly, that they may possess regular, seasonable and certain means of attaining the peculiar qualifications necessary for their station.

Under all these circumstances, the most deliberate



and assiduous examination of all the important questions considered in this paper, determined the Governor-General to found a Collegiate Institution at Fort William.

### 36. COMPLAINT OF THE COURT OF DIRECTORS' AGAINST THE BOARD OF CONTROL, 1816.

The Board employs its powers not merely in the way of superintendence and control, but in systematic and active management. Not only have very important despatches originated with and been proposed by the Board conveying to the Governments in India peremptory and detailed instructions without any previous consultation with the Local Governments (a course of proceeding without example in former times) but the drafts prepared under the direction of the "chairs" and approved by the Committee of Correspondence have frequently, without either personal or written communication with the "chairs," been so much altered in "previous communication"<sup>2</sup> as completely to change their structure and character. In the paragraphs which were not wholly expunged there are generally to be found a number of verbal alterations that, in not a few instances, cannot stand the test of sound criticism . . . . even where the Board seems to agree with the general view of subjects taken in the drafts sent up, the paragraphs are often cancelled and others substituted in their stead, the same as to substance and effect, but differing in their style and construction . . . . Were the Board to state their

Systematic and active management

Interference with letters sent to India

<sup>1</sup> This protest related to the conduct of the Earl of Buckinghamshire, President of the Board of Control, 1812-1816. See C. H. Philips, *The East India Company*, Chapter VII.

<sup>2</sup> This Committee "took cognisance of such of the Company's political affairs which were not of a nature to require secrecy, and also of the arrangement of the home and Eastern establishment." It was one of the twelve major Committees (excluding the Secret Committee) into which the Court of Directors was divided.

<sup>3</sup> Pitt's India Act, Clause 12. See C. H. Philips, *The East India Company*, pp. 21-22.

reasons at large for these alterations as required by the statute<sup>1</sup> this course of proceeding would give rise to a correspondence between the Board and the Court probably not less voluminous than the correspondence between the Court and the Governments in India.

**37. SIR THOMAS MUNRO<sup>2</sup> ON ULTIMATE  
AIM OF BRITISH RULE IN INDIA, 1824.  
(Minute, December 31, 1824).**

British  
rule should  
aim at  
improving  
character  
of Indians

There is one great question to which we should look in all our arrangements : What is to be their final result on the character of the people ? Is it to be raised, or is it to be lowered ? Are we to be satisfied with merely securing our power and protecting the inhabitants, leaving them to sink gradually in character lower than at present ; or are we to endeavour to raise their character, and to render them worthy of filling higher situations in the management of their country, and of devising plans for its improvement ? It ought undoubtedly to be our aim to raise the minds of the natives, and to take care that whenever our connection with India might cease, it did not appear that the only fruit of our dominion there had been to leave the people more abject and less able to govern themselves than when we found them

Indians  
should be  
appointed  
to high  
offices

we have had too little experience, and are too little acquainted with the natives, to be able to determine without trial what means would be most likely to facilitate this improvement. Various measures might be suggested but no one appears to me so well calculated to insure success as that of endeavouring to give them a higher opinion of themselves, by placing more confidence in them, by employing them in important situations, and perhaps by rendering them eligible to almost every office under Government. It is not necessary at present to define the exact limit to which their eligibility should be carried, but there seems to be no reason why they should be excluded from any

<sup>1</sup> Pitt's India Act, Clause 12.

<sup>2</sup> Governor of Madras, 1820-1827. See *Life* by Gleig.

office for which they are qualified, without danger to the preservation of our own ascendancy.

We should look upon India, not as a temporary possession, but as one which is to be maintained permanently, until the natives shall at some future age have abandoned most of their superstitions and prejudices, and become sufficiently enlightened, to frame a regular government for themselves, and to conduct and preserve it. Whenever such a time shall arrive, it will probably be best for both countries that the British control over India should be gradually withdrawn if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves.

Ultimate withdrawal of British control from India

### 38. POSITION OF THE COURT OF DIRECTORS, 1829.

(Court of Directors to Board of Control, August 27, 1829).

When the Indian Government as constituted (comprehending under that term the established authority in this country as well as in India) is to be characterised by a single word, it might with no impropriety be denominated a Government of checks. Now whatever may be the advantage of checks, delay will generally be in proportion to the number and efficiency of the checks<sup>1</sup>. In the ordinary course of Indian administration much must always be left to the discretion of the local Governments and unless upon questions of general policy and personal cases it rarely occurs that instructions from hence can reach India before the time for acting upon them is gone by. This is a necessary consequence of the great distance between the two countries, the rapid succession of events in India which are seldom long foreseen even by those who are on the spot, and the importance of the ruling

'Government of checks'

Consequent delay

<sup>1</sup> See C. H. Phillips, *The East India Company, 1784-1834*, pp. 20-22, 284.

authorities there acting with promptitude and decision and adapting their measures on their own responsibility to the varying emergencies of the hour. These circumstances unavoidably regulate but do not exclude the controlling authority of the Court of Directors. Without defeating the intention of Parliament they point out the best and indeed the only mode in which these intentions can be practically fulfilled. Although, with the exception above adverted to, a specific line of conduct cannot often be prescribed to the Indian Governments, yet it seems to indicate any other rather than a state of irresponsibility that the proceedings of those Governments are reported with fidelity, examined with care, and commented upon with freedom by the Home authorities. Nor can the judgments passed by the Court be deemed useless whilst, though they have immediate reference to past transactions, they serve ultimately as rules for the future guidance of their servants abroad.

Nature  
and utility  
of authority  
exercised  
by Court  
of Directors

### **39. LORD WILLIAM BENTINCK ON THE RELATIONS BETWEEN THE SUPREME AND THE SUBORDINATE GOVERNMENTS, 1831. (Minute, September 14, 1831).**

The members of the Committee, as well as my two colleagues, Mr. Bayley and Sir C. Metcalfe, concur in the opinion that the local details pressing upon the time of the Supreme Government utterly preclude its performance of the higher and more important functions of its office. To this opinion I entirely assent.

Supreme  
Government  
should be  
relieved of  
local details

The same concurrence of opinion exists as to the necessity of the Supreme Government being divested of all local charge, and that its duties should be confined to a general control of the subordinate presidencies, and that a distinct and a fourth government should be formed for the Upper Provinces.

Of the total inadequacy of a government stationed at Calcutta to control and superintend the administration in the Western Provinces, I have frequently had occasion to remark, and actual investigation has amply confirmed the justness of the opinion.

Upon the degree of control which it would be most salutary for the Supreme Government to exercise over the other presidencies, there appears to be no great difference of opinion. Hitherto, this control has been rather nominal than real. It has been confined to general measures of government, to political negotiations, to the making of treaties, to the declaration of war, to great financial arrangements, and latterly, to the confirmation of all regulations.

Nominal  
control of  
Supreme  
Government  
over sub-  
ordinate  
Presidencies

In the details of the administration of the subordinate presidencies the Supreme Government have no interference. The only knowledge they have of their proceedings is from the copies of their despatches to the Court, and by the published orders of the Government and of the Commander-in-Chief. The Supreme Government have, indeed, the power of issuing orders, if they observe anything in these communications deserving of strong disapprobation. But it would be highly inexpedient to use the power except in extreme cases, because the act being done, a public revocation of it places the Subordinate Government in some degree of embarrassment and humiliation; and the measure being under reference to the Court, the Supreme Government may be found in the same objectionable position with respect to its own superiors; and from the public proclamation of conflicting orders and sentiments much inconvenience must unavoidably arise.

The subordinate Governments naturally enough stickle for their own independence. They objected strongly to their regulations being made subject to the sanction of the Supreme Government, though it seems difficult to understand how legislation, except upon occasions of public danger, or some other pressing emergency, can be otherwise than benefited by additional discussion and deliberation, by more enlarged experience, and by a comparison with the success of remedies applied to the same evils; and so the Honourable Court in their wisdom have ruled. But in all other proceedings of the administration, what disadvantage could arise from a prompt and immediate

Unjustifiable  
claim of  
subordinate  
Govern-  
ments for  
independ-  
ence

check upon any departure from uniformity of system, upon a non-compliance with the orders of the home authorities, an evasion of which is so encouraged and facilitated by the endless delay of repeated references to so distant an authority, and above all, upon lavish expenditure? In the Military Department instances daily occur of indulgences granted in one army, to which the officers and soldiers of the other, whether European or native, may have an equal right.

It might be assumed from the preceding remarks that I am in favour of a Supreme Government, as recommended by the Committee and my colleagues. **Wanted—effective control of Supreme Government over subordinate Presidencies** whose duties should be exclusively those of general control and superintendence. But my concurrence only goes to the expediency of a more effective control in the Supreme Government over the other presidencies, and I consider this to be practicable, without the great change proposed of forming Bengal into two presidencies, to which there are great local and practical objections, and without incurring the great expense that this larger scheme would entail; although I entirely adopt the sentiments of Mr. Bayley that for so great an object as a much improved government of the immense empire, the additional charge, even at the highest scale, is not worth a moment's consideration.

My first objection is to the separation of the **Proposal for creating a separate Government for Upper Provinces, disapproved** Presidency of Bengal into two separate Governments. It is true that there is a broad line distinguishing the Upper from the Lower Provinces; they are different in climate, in character, and in their political circumstances. They each ought to have within their reach those authorities, revenue and judicial, upon whom their rights and interests so materially depend. But in other respects there is a great mutual connexion between their general interests; one river pervades the whole territory from west to east; one port receives all its produce; Calcutta is the great exchange upon which the commercial and pecuniary transactions of the whole

are carried on. For these, and for many other reasons, it would be very inconvenient to divide the control.

\* \* \* \*

With respect then to the Bengal Presidency, all the territories at present constituting it should, in my opinion, be subject, as now, to a Governor-General in Council ; but the seat of Government should be placed in the Upper Provinces, the scene of all its most important transactions, revenue, military, and political. No spot presents so many advantages for direct control, and for ready intercourse with the most distant provinces, and for the despatch of all business, as Allahabad. I annex to this minute a map showing its contiguity to our most important affairs. It is immediately adjacent to Oude, to the Saugur and Nerbudda territories, to Bundelcund : it has under its eyes the revenue settlements of the Upper Provinces, of such vast importance to the Government and to the people, and which could no longer so shamefully stagnate. Gwalior, Malwa, and Rajputana are all brought within easy means of immediate superintendence, and of personal communication if necessary. A steamer from Allahabad would reach Agra or Delhi on the Jamuna, and any place equally distant on the Ganges, in four or five days. At Allahabad, also, the Government may have the advantage of the advice of the Commander-in-Chief in Council, as contemplated by the Legislature, whose head-quarters for the future always ought to be, and I may venture to predict always will be, in the Upper Provinces.

Proposal for  
transferring  
capital to  
Allahabad

But to relieve the Supreme Government of the load of details which has hitherto so unworthily occupied its time, it is necessary that a subordinate authority, similar to that of Vice-President in Council, should, under the orders of the Governor-General in Council, reside at the Presidency, superintending the revenue and judicial administration of the Lower Provinces, and of all our territories to the eastward, and conducting all the business at Calcutta. Having now been absent from Calcutta since October, and having reserved to myself a complete cognisance and control

Proposal for  
administra-  
tion of  
Lower Pro-  
vinces

over the whole affairs of the Presidency, very much similar to what should be executed by the Governor-General in Council if placed at Allahabad, I am, from this actual experiment, inclined to think that the Supreme Government would be enabled to devote sufficient attention to the general affairs of the empire without renouncing the direct management of the Bengal Presidency.

Nature of interference with the administration of the Subordinate Governments should take place; the interference by Supreme Government should be rather of check, of a preventive and restraining character. The Supreme Government should come in aid, and not in supersession of the home authority. It should supply that defect and weakness in the home direction arising from distance, from the delay in the issue of its orders, and from the imperfect knowledge it must possess of the circumstances and true bearings of very many questions. Its business would be to preserve the system as already approved from innovation, to prevent all new expenditure, to prohibit all changes in the various details connected with the military establishment, which are for ever occurring in spite of the Court's orders, and especially so to superintend the general distribution of the troops of all the presidencies, as to make the whole act in unison for the general defence. But it is impossible for the Supreme Government to perform even the least part of these duties without knowing beforehand the intentions of the other governments; and for its accomplishment it would be necessary to require that all reports of their proceedings, as is the case with all subordinate authorities, should be made direct, and in the first instance, to the Supreme Government, copies being sent for the information of the Honourable Court.

With respect to the constitution of the Supreme Government, it might be either left as it is, or with reference to the whole of India being now subject to British rule, and to the expediency therefore of its being regulated by one uniform system of policy, it



might be thought preferable to compose it of the Governor-General and one councillor from each of the three presidencies. The knowledge and experience of the whole would thus be combined for the general improvement. How much would the revenue settlements of Bengal have been promoted, if by such means the spirit of Sir Thomas Munro's superior management could have been infused, and practically brought to bear upon this branch of our administration?

#### 40. LORD WILLIAM BENTINCK ON THE CIVIL SERVICE,<sup>1</sup> 1831.

(Minutes, November 10, 1831).

While I am of opinion that it would be difficult to form any agency more efficient than that of the Civil Service; and while I deem it necessary that its integrity as a body, and the secure prospect of honour and reward, should be preserved to it; it is impossible, at the same time, to avoid referring to some of the disadvantages belonging to this, in common with all "exclusive orders." In all will be found the same disposition to view with satisfaction things as they are; the same indulgence towards the errors of members of the same community, and the want of that exertion which rivalry and competition alone can excite. But besides these, there is in the mode of recruiting the Civil Service by very young men, a cause operating very much to diminish what might otherwise be the greater usefulness of a European agency. These young men come out at too early an age to have acquired any practical experience in any branch of business, science,

Defects of  
the Civil  
Service

<sup>1</sup> The Select Committee of 1832 condemned the system of training the Company's servants in India and described the college at Fort William as "a source of more debt than knowledge in the Civil Service." In a Minute dated December 27, 1828, Lord William Bentinck observed that "the average expense of the education of each writer during the last three years was 6,621 rupees or \$560 per annum; to which must be added a further charge (since most properly discontinued) of 4,000 rupees, or £400, to each writer for outfit." He added that even then "there are many who have been in the college for one and two years without passing in any language." In

Defects of  
Fort William  
College

or knowledge ; and therefore, instead of bringing out, as newcomers, the latest improvements of the European civilised world, to be engrafted upon the existing stock, they themselves retrograde, and fall into the opinions and feelings of an age gone by. I venture to think that it would be good policy to make furlough a compulsory measure. But this alone would not be sufficient to correct this exclusiveness. To introduce a feeling and council independent altogether of the service, and to add to it the benefit of European experience, combined with matured judgment and acknowledged talents and learning, it would be most useful in my judgment to associate with the judges of the Sudder Courts one or more judges appointed by His Majesty, for the purpose of better superintending and of improving the administration of justice and of the police. It is essential that this infusion of a different agency should not be so extensive as to interfere with the integrity of the service, and with its just and fair prospects.

Defects of  
appointing  
very young  
men to the  
Civil Service

Suggestions  
for removing  
defects

\* \* \*

The result of all my investigation into the system of our administration has been a conviction that its main defect consists in the absence of all official subordination, in the equality existing between all ranks, and in the individuality, if I may so say, of every public functionary. The recommendation that I would most strongly urge on the Honourable Court is, that they would continue and persevere in the system long since recommended to them by the Madras Government, upon the authority of Sir Thomas Munro, of uniting the appointments of collector and magistrate,

a Minute dated December 28, 1828, Sir Charles Metcalfe expressed the opinion that the college "ought to be abolished, as being mischievous with respect to the extravagance which it encourages, and the consequent state of debt and embarrassment which it causes throughout the civil service, and as being unnecessary, and therefore useless for that purpose of instruction which it is professedly designed to accomplish, and consequently entailing a waste of public resources." For Metcalfe's suggestions, see Anderson and Subedar, *The Development of an Indian Policy*, p. 63.

of destroying the independence of each other of every officer employed in the same district, of making the collector's a great office, consisting of deputy collectors and joint magistrates and assistants, subordinate to one head, and acting upon the same system. The public will then be saved from the evils of a continually recurring interregnum, from the succession of perfect strangers to all the concerns of the district, and from the undue advantages which all such occasions of the virtual suspension of authority give to a corrupt *omlah*<sup>1</sup>. This arrangement gives also to the Government an opportunity of providing a counterbalance to the inefficiency of a chief, by aiding him with subordinates of superior qualification, and by placing under the correction of a strong superior the idle and the weak. It is in a school of this kind that young men will best be trained. A profound knowledge of jurisprudence, or the high attainments which distinguish English lawyers and judges, are not to be looked for; nor, however desirable, are they indispensable; but what is necessary is that those both young and old, who have the decision of suits, whether for 10 or 1000 rupees, and who are vested with the power of fine, imprisonment, and corporal punishment, should have served their apprenticeship; should be conversant with the manners and business of the country; and that their opinions should be formed upon the practice and greater experience of their superiors in office.

Proposal for  
uniting the  
offices of  
Collector  
and Magis-  
trate

Merits of the  
proposal

Proper train-  
ing for  
judicial  
officers

#### 41. CHARTER ACT OF 1833.

(3 and 4 Will. IV, c. 85).

An Act for effecting an arrangement with the East India Company, and for the better government of His Majesty's Indian territories, till the 30th day of April, 1854.

\* \* \* \*

<sup>1</sup> Clerk.

3. Provided always, and be it enacted, that from and after the said 22nd day of April, 1834, the exclusive right of trading with the Dominions of the Emperor of China, and of trading in tea, continued to the said Company by the said Act of the 53rd year of King George the Third, shall cease.

Company  
deprived of  
monopoly of  
China Trade  
and trade  
in tea

4. And be it enacted, that the said Company shall, with all convenient speed after the said 22nd day of April, 1834, close their commercial business

\* \* \* \*

19. And be it enacted, that it shall and may be lawful for His Majesty by any Letters Patent or by any Commission or Commissions to be issued under the great seal of Great Britain from time to time to nominate, constitute, and appoint, during pleasure, such persons as His Majesty shall think fit to be, and who shall accordingly be and be styled Commissioners for the affairs of India; and every Enactment, Provision, Matter, and Thing relating to the Commissioners for the affairs of India in any other Act or Acts contained, so far as the same are in force and not repealed by or repugnant to this Act, shall be deemed and taken to be applicable to the Commissioners to be nominated as aforesaid.

King may  
appoint  
Commis-  
sioners  
for the  
affairs  
of India

20. And be it enacted, that the Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the Principal Secretaries of State, the Chancellor of the Exchequer for the time being shall, by virtue of their respective offices, be and they are hereby declared to be Commissioners for the Affairs of India, in conjunction with the persons to be nominated in any such Commission as aforesaid, and they shall have the same Powers respectively as if they had been expressly nominated in such Commission, in the Order in which they are herein mentioned, next after the Commissioner first named therein.

Ex-officio  
Commis-  
sioners

21. And be it enacted, that any Two or more of the said Commissioners shall and may form a Board for executing the several Powers which, by this Act, or by any other Act or Acts, are or shall be given to

Commis-  
sioners to  
form a  
Board

or vested in the Commissioners for the Affairs of India ; and that the Commissioner first named in any such Letters patent or Commission, for the Time being, shall be the President of the said Board ; and that when any Board shall be formed in the Absence of the President, the Commissioner next in order of nomination in this Act or in the said Commission, of those who shall be present, shall for that Turn preside at the said Board.

President  
of the  
Board

22. And be it enacted, that if the Commissioners present at any Board shall be equally divided in Opinion with respect to any matter by them discussed, then and on every such occasion the President, or in his Absence the Commissioner acting as such, shall have Two Voices or the casting vote.

President  
to have  
casting vote

\* \* \* \*

25. And be it enacted, that the said Board shall have and be invested with full Power and Authority to superintend, direct, and control all Acts, Operations, and Concerns of the said Company which in anywise relate to or concern the Government or Revenues of the said Territories, or the Property hereby vested in the said Company in Trust as aforesaid, and all Grants of Salaries, Gratuities, and Allowances, and all other Payments and Charges whatever, out of or upon the said Revenues and Property respectively, except as hereinafter is mentioned.

Board to  
control all  
acts con-  
cerning  
India

\* \* \* \*

35. And be it enacted, that the said Court of Directors shall from Time to Time appoint a Secret Committee, to consist of any Number not exceeding Three of the said Directors, for the particular purposes in this Act specified ; which said Directors so appointed shall, before they or any of them shall act in the Execution of the Powers and Trusts hereby reposed in them, take an Oath of the Tenor following ; (that is to say), " I (A.B.) do swear, That I will, according to the best of my Skill and Judgment, faithfully execute the several Trusts and Powers reposed in me as a Member of the Secret Committee appointed by the Court of Directors

Secret  
Committee

Oath to  
be taken  
by mem-  
bers of  
Secret  
Committee

of the India Company ; I will not disclose or make known any of the secret orders, Instructions, Dispatches, Official Letters or Communications which shall be sent or given to me by the Commissioners for the Affairs of India, save only to the other Members of the said Secret Committee, or to the Person or Persons who shall be duly nominated and employed in transcribing or preparing the same respectively, unless I shall be authorized by the said Commissioners to disclose and make known the same. So help me God."

36. Provided also, and be it enacted, that if the said Board shall be of opinion that the Subject Matter of any of their Deliberations concerning the levying War or making Peace, or treating or negotiating with any of the Native Princes or States in India, or with any other Princes or States, or touching the Policy to be observed with respect to such Princes or States, intended to be communicated in Orders, Dispatches, Official Letters or Communications, to any of the Governments or Presidencies in India, or to any Officers or Servants of the said Company shall be of a nature to require Secrecy, it shall and may be lawful for the said Board to send their Orders, Dispatches, Official Letters or Communications, to the Secret Committee of the said Court of Directors to be appointed as is by this Act directed, who shall thereupon, without disclosing the same, transmit the same according to the Tenor thereof, or pursuant to the Directions of the said Board, to the respective Governments and Presidencies, Officers and Servants : and that the said Governments and Presidencies, Officers and Servants shall be bound to pay a faithful Obedience thereto, in like Manner as if such Orders, Dispatches, Official Letters or Communications had been sent to them by the said Court of Directors.

Procedure to be adopted by the Board for sending secret communications to India

38. And be it enacted, that the Territories now subject to the Government of the Presidency of Fort William in Bengal shall be divided into Two distinct

Presidencies, one of such Presidencies, in which shall be included Fort William aforesaid, to be styled the Presidency of Fort William in Bengal, and the other of such Presidencies to be styled the Presidency of Agra;<sup>1</sup> and that it shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what Part or Parts of any of the Territories under the Government of the said Company shall from Time to Time be subject to the Government of each of the several Presidencies now subsisting or to be established as aforesaid, and from Time to Time, as Occasion may require, to revoke and alter, in the whole or in part, such Appointment, and such new Distribution of the same as shall be deemed expedient.

Creation of  
two Presi-  
dencies:  
Fort  
William  
and Agra

39. And be it enacted, that the Superintendence, Direction, and Control of the whole Civil and Military Government of all the said Territories and Revenues in India shall be and is hereby vested in a Governor-General and Counsellors, to be styled "The Governor-General of India in Council."

Governor-  
General of  
India

40. And be it enacted, that there shall be Four Ordinary Members of the said Council, Three of whom shall from Time to Time be appointed by the said Court of Directors from amongst such Persons as shall be or shall have been Servants of the said Company; and each of the said Three Ordinary Members of Council shall at the Time of his appointment have been in the service of the said Company for at least Ten Years; and if he shall be in the Military Service of the said Company, he shall not during his Continuance in Office as a Member of Council hold any Military Command, or be employed in actual Military Duties; and that the Fourth Ordinary Member of Council shall from Time to Time be appointed from amongst Persons who shall not be Servants of the said Company by the said Court of

Ordinary  
Members  
of Council

Law  
Member

<sup>1</sup> The arrangement proposed here was postponed by an Act of 1833, which provided for the appointment of a Lieutenant Governor of the North-West Provinces.

Extra-ordinary Member  
 Directors, subject to the Approbation of His Majesty, to be signified in Writing by his Royal Sign Manual, countersigned by the President of the said Board ; provided that such last mentioned Member of Council shall not be entitled to sit or vote in the said Council except at Meetings thereof for making Laws and Regulations ; and it shall be lawful for the said Court of Directors to appoint the Commander-in-Chief of the Company's Forces in India, and if there shall be no such Commander-in-Chief, or the Offices of such Commander-in-Chief and of Governor-General of India shall be vested in the same Person, then the Commander-in-Chief of the Forces on the Bengal Establishment to be an Extraordinary Member of the said Council, and such Extraordinary Member of Council shall have Rank and Precedence at the Council Board next after the Governor-General.

41. And be it enacted, that the Person who shall be Governor-General of the Presidency of Fort William in Bengal on the Twenty-second Day of April one thousand eight hundred and thirty-four shall be the First Governor-General of India under this Act, and such Persons as shall be Members of Council of the same Presidency on that Day shall be respectively Members of the Council constituted by this Act.

Appoint-ment of Governor-General  
 42. And be it enacted, that all vacancies happening in the office of Governor-General of India shall from Time to Time be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified in writing by his Royal Sign Manual, countersigned by the President of the said Board.

Provision for law-making by Governor-General in Council  
 43. And be it enacted, that the said Governor-General in Council shall have Power to make Laws and Regulations for repealing, amending, or altering any Laws or Regulations whatever now in force or hereafter to be in force in the said Territories or any Part thereof, and to make Laws and Regulations for all Persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the



Jurisdictions thereof, and for all Places and Things whatsoever within and throughout the whole and every Part of the said Territories, and for all Servants of the said Company within the Dominions of Princes and States in alliance with the said Company; save and except that the said Governor-General in Council shall not have the power of making any Laws or Regulations which shall in any way repeal, vary, suspend, or affect any of the Provisions of this Act, or any of the Provisions of the Acts for punishing Mutiny and Desertion of Officers and Soldiers, whether in the Service of His Majesty or the said Company, or any Provisions of any Act hereafter to be passed in any wise affecting the said Company or the said Territories or the Inhabitants thereof, or any Laws or Regulations which shall in any way affect any Prerogative of the Crown, or the Authority of Parliament, or the constitution or Rights of the said Company, or any Part of the unwritten Laws or Constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any Degree the Allegiance of any Person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the said Crown over any Part of the said Territories.

Restrictions  
on the law-  
making  
powers of  
Governor-  
General  
in Council

44. Provided always, and be it enacted, that in case the said Court of Directors, under such Control as by this Act is provided, shall signify to the said Governor-General in Council their Disallowance of any Laws or Regulations by the said Governor-General in Council made, then and in every such Case, upon Receipt by the said Governor-General in Council of Notice of such Disallowance, the said Governor-General in Council shall forthwith repeal all Laws and Regulations so disallowed.

Power of  
Court of  
Directors to  
disallow  
laws made  
by Governor-  
General  
in Council

45. Provided also, and be it enacted, that all Laws and Regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same Force and Effect within and throughout the said Territories as any Act of Parliament would or ought to be within the same Territories, and shall be taken notice of by all Courts of Justice whatsoever within the said Terri-

Laws made  
by Governor-  
General  
in Council  
to have  
same force  
as Acts of  
Parliament

**Laws made by Governor-General in Council need not be registered by any Court** tories, in the same Manner as any Public Act of Parliament would and ought to be taken notice of ; and it shall not be necessary to register or publish in any Court of Justice any Laws or Regulations made by the said Governor-General in Council.

**Restrictions on law-making power of Governor-General in Council** 46. Provided also, and be it enacted, that it shall not be lawful for the said Governor-General in Council, without the previous Sanction of the said Court of Directors, to make any Law or Regulation whereby Power shall be given to any Courts of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the Punishment of Death any of His Majesty's natural-born Subjects born in Europe, or the Children of such Subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters.

**Rules regarding procedure of Governor-General in Council** 47. And be it enacted, that the said Court of Directors shall forthwith submit, for the Approbation of the said Board, such Rules as they shall deem expedient for the Procedure of the Governor-General in Council in the Discharge and Exercise of all Powers, Functions, and Duties imposed on or vested in him by virtue of this Act, or to be imposed or vested in him by any other Act or Acts ; which Rules shall prescribe the Modes of Promulgation of any Laws or Regulations to be made by the said Governor-General in Council, and of the Authentication of all Acts and Proceedings whatsoever of the said Governor-General in Council ; and such Rules, when approved by the said Board of Commissioners, shall be of the same Force as if they had been inserted in this Act : Provided always, that such Rules shall be laid before both Houses of Parliament in the Session next after the Approval thereof.

**Procedure of law-making by Governor-General in Council** 48. Provided always, and be it enacted, that all Laws and Regulations shall be made at some Meeting of the Council at which the said Governor-General and at least Three of the Ordinary Members of Council shall be assembled, and that all other Functions of the said Governor-General in Council may be exercised by the said Governor-General and One or more Ordinary

Member or Members of Council, and that in every Case of Difference of Opinion at Meetings of the said Council where there shall be an Equality of Voices the said Governor-General shall have Two Votes or the casting Vote.

49. Provided always, and be it enacted, that when and so often as any Measure shall be proposed before the said Governor-General in Council, whereby the safety, Tranquillity or Interests of the British Possessions in India, or any Part thereof, are or may be, in the Judgment of the said Governor-General, essentially affected and the said Governor-General shall be of opinion either that the Measure so proposed ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the Majority in Council then present shall differ in and dissent from such Opinion, the said Governor-General and Members of Council are hereby directed forthwith mutually to exchange with and communicate to each other in writing under their respective Hands, to be recorded at large on their Secret Consultations, the Grounds and Reasons of their respective Opinions; and if after considering the same the said Governor-General and the Majority in Council shall still differ in Opinion, it shall be lawful for the said Governor-General, of his own Authority and on his own Responsibility, to suspend or reject the Measure so proposed in part or in whole, or to adopt and carry any Measure so proposed into Execution, as the said Governor-General shall think fit and expedient.

Differences  
between  
Governor-  
General  
and Council

Governor-  
General's  
power to  
override  
Council

50. And be it enacted, that the said Council shall from Time to Time assemble at such Place or Places as shall be appointed by the said Governor-General in Council within the said Territories, and that as often as the said Council shall assemble within any of the Presidencies of Fort St. George, Bombay, or Agra, the Governor of such Presidency shall act as an Extraordinary Member of Council.

Governors of  
Presidencies  
to act as  
extra-  
ordinary  
Members  
of Council

51. Provided always, and be it enacted, that nothing herein contained shall extend to affect in any way the Right of Parliament to make Laws for the

Right of  
Parliament  
reserved

said Territories and for all the Inhabitants thereof; and it is expressly declared that a full, complete, and constantly existing Right and Power is intended to be reserved to Parliament to control, supersede, or prevent all Proceedings and Acts whatsoever of the said Governor-General in Council, and to repeal and alter at any Time any Law or Regulation whatsoever made by the said Governor-General in Council, and in all respects to legislate for the said Territories and all the inhabitants thereof in as full and ample a Manner as if this Act had not been passed: and the better to enable Parliament to exercise at all Times such Right and Power, all Laws and Regulations made by the said Governor-General in Council shall be transmitted to England, and laid before both Houses of Parliament, in the same Manner as is now by Law Provided concerning the Rules and Regulations made by the several Governments in India.

All previous  
enactments  
regarding  
Supreme  
Government  
to remain  
in force,  
unless re-  
pealed by or  
repugnant  
to this Act

52. And be it enacted, that all Enactments, Provisions, Matters, and Things relating to the Governor-General of Fort William in Bengal in Council, and the Governor-General of Fort William in Bengal alone, respectively, in any other Act or Acts contained, so far as the same are now in force, and not repealed by or repugnant to the Provisions of this Act, shall continue and be in force and be applicable to the Governor-General of India in Council, and to the Governor-General of India alone, respectively.

\* \* \* \*

Government of  
Presidencies

56. And be it enacted, that the Executive Government of each of the several Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra shall be administered by a Governor and Three Councillors, to be styled "The Governor in Council of the said Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra, respectively;" and the said Governor and Councillors respectively of each such Presidency shall have the same Rights and Voices in their Assemblies, and shall observe the same Order and Course in their Proceedings, as the Governors in Council of the Presidencies of Fort Saint

Governor-  
General  
to remain  
Governor  
of Bengal

George and Bombay now have and observe, and that the Governor-General of India for the Time being shall be Governor of the Presidency of Fort William in Bengal.

57. Provided always, and be it enacted, that it shall and may be lawful for the said Court of Directors, under such Control as is by this Act provided, to revoke and suspend, so often and for such Periods as the said Court shall in that behalf direct, the Appointment of Councils in all or any of the said Presidencies, or to reduce the Number of Councillors in all or any of the said Councils, and during such Time as a Council shall not be appointed in any such Presidency the Executive Government thereof shall be administered by a Governor alone.

Special  
provision  
about  
Councils

58. And be it enacted, that the several Persons who on the said Twenty-Second Day of April, One thousand eight hundred and thirty-four shall be Governors of the respective Presidencies of Fort Saint George and Bombay, shall be the first Governors of the said Presidencies respectively under this Act ; and that the Office of Governor of the said Presidency of Agra, and all vacancies happening in the Offices of the Governors of the said Presidencies respectively, shall be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified under his Royal Sign Manual, countersigned by the said President of the said Board of Commissioners.

Appoint-  
ment of  
Presidency  
Governors

59. And be it enacted, that in the Presidencies in which the Appointment of a Council shall be suspended under the Provision herein before contained, and during such Time as Councils shall not be appointed therein respectively, the Governors appointed under this Act, and in the Presidencies in which Councils shall from Time to Time be appointed the said Governors in their respective Councils, shall have all the Rights, Powers, Duties, Functions, and Immunities whatsoever, not in anywise repugnant to this Act, which the Governors of Fort Saint George and Bombay in their respective Councils now have within their respective Presidencies ; and that the Governors and Members of Council of

Powers of  
Presidency  
Governors

Presidencies appointed by or under this Act shall severally have all the Rights, Powers, and Immunities respectively, not in any wise repugnant to this Act, which the Governors and Members of Council of the Presidencies of Fort Saint George and Bombay respectively now have in their respective Presidencies ; provided that no Governor or Governor in Council shall have the Power of Making or suspending any Regulations or Laws in any case whatever, unless in cases of urgent Necessity (the Burthen of the Proof whereof shall be on such Governor or Governor in Council). and then only until the Decision of the Governor-General of India in Council shall be signified thereon : and provided also, that no Governor or Governor in Council shall have the power of creating any new Office, or granting any salary, Gratuity, or Allowance, without the previous Sanction of the Governor-General of India in Council.

Control of  
Governor-  
General  
in Council  
over  
Presidency  
Governors

60. Provided always, and be it enacted, that when and so often as the said Court of Directors shall neglect for the Space of Two Calendar Months, to be computed from the Day whereon the Notification of the Vacancy of any office or Employment in India in the Appointment of the said Court shall have been received by the said Court, to supply such Vacancy, then and in every such Case it shall be lawful for His Majesty to appoint, by Writing under his Sign manual, such Person as His Majesty shall think proper to supply such Vacancy ; and that every Person so appointed shall have the same Powers, Privileges, and Authorities as if he or they had been appointed by the said Court, and shall not be subject to Removal or Dismissal without the Approbation and Consent of His Majesty.

King's  
right to  
fill up  
vacancies

61. And be it enacted, that it shall be lawful for the said Court of Directors to appoint any person or Persons Provisionally to succeed to any of the Offices aforesaid, for supplying any Vacancy or Vacancies therein, when the same shall happen by the Death or Resignation of the Person or Persons holding the same office or offices respectively, or on his or their Departure from India with Intent to return to Europe, or on any

Provisional  
appointments

Event or Contingency expressed in any such provisional Appointment or Appointments to the same respectively, and such Appointments again to revoke, Provided that every provisional Appointment to the several offices of Governor-General of India, Governor of a Presidency, and the Member of Council of India, by this Act directed to be appointed from amongst Persons who shall not be servants of the said Company, shall be subject to the Approbation of His Majesty, to be signified as aforesaid, but that no Person so appointed to succeed provisionally to any of the said Offices shall be entitled to any Authority, Salary or Emolument appertaining thereto until he shall be in the actual Possession of such Office.

62. And be it enacted, that if any vacancy shall happen in the office of Governor-General of India when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case the ordinary Member of Council next in rank to the said Governor-General shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of India, and shall be entitled to receive the Emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing his salary and allowance of a member of Council for the same period.

Acting  
Governor-  
General

63. And be it enacted, that if any vacancy shall happen in the office of Governor of Fort Saint George, Bombay, or Agra, when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case, if there shall be a Council in the Presidency in which such vacancy shall happen, the member of such Council, who shall be next in rank to the Governor, other than the Commander-in-Chief or officer commanding the forces of such Presidency, and if there shall be no Council, then the Secretary of

Acting  
Presidency  
Governor

Government of the said Presidency who shall be senior in the said Office of Secretary, shall hold and execute the said Office of Governor until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor shall, during the time of his continuing to act as such, receive and be entitled to the Emoluments and advantages appertaining to the office by him supplied, such acting Governor foregoing all salaries and allowances by him held and enjoyed at the time of his being called to supply such office.

64. And be it enacted, that if any vacancy shall happen in the office of an ordinary member of Council of India when no person provisionally or otherwise appointed to succeed thereto shall be then present on the spot, then and on every such occasion such vacancy shall be supplied by the appointment of the Governor-General in Council; and if any vacancy shall happen in the Office of a Member of Council of any Presidency when no person provisionally or otherwise appointed to succeed thereto shall be then present on the Spot, then and on every such occasion such Vacancy shall be supplied by the appointment of the Governor in Council of the Presidency in which such vacancy shall happen, and until a Successor shall arrive the Person so nominated shall execute the office by him supplied, and shall have all the powers thereof, and shall have and be entitled to the salary and other Emoluments and Advantages appertaining to the said Office during his continuance therein, every such temporary Member of Council foregoing all Salaries and Allowances by him held and enjoyed at the time of his being appointed to such office: Provided always, that no person shall be appointed a temporary Member of Council who might not have been appointed by the said Court of Directors to fill the vacancy supplied by such temporary appointment.

65. And be it further enacted, that the said Governor-General in Council shall have and be invested by virtue of this Act with full Power and Authority to superintend and control the Governors and



Governors in Council of Fort William in Bengal, Fort Saint George, Bombay, and Agra, in all Points relating to the Civil or Military Administration of the said Presidencies respectively, and the said Governors and Governors in Council shall be bound to obey such orders and Instructions of the said Governor-General in Council in all Cases whatsoever.

Control of Governor-General in Council over Presidency Governors in Council

66. And be it enacted, that it shall and may be lawful for the Governors or Governors in Council of Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively, to propose to the said Governor-General in Council Drafts or Projects of any Laws or Regulations which the said Governors or Governors in Council respectively may think expedient, together with their Reasons for proposing the same; and the said Governor-General in Council is hereby required to take the same and such Reasons into consideration, and to communicate the Resolutions of the said Governor-General in Council thereon, to the Governor or Governor in Council by whom the same shall have been proposed.

Right of Presidency Governors to suggest draft laws to Governor-General in Council

67. And be it enacted, that when the said Governor-General shall visit any of the Presidencies of Fort Saint George, Bombay or Agra, the Powers of the Governors of those Presidencies respectively shall not by reason of such visit be suspended.

68. And be it enacted, that the said Governors, and Governors in Council of the said Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively shall and they are hereby respectively required regularly to transmit to the said Governor-General in Council true and exact copies of all such Orders and Acts of their respective Governments, and also Advice and Intelligence of all Transactions and Matters which shall have come to their Knowledge, and which they shall deem material to be communicated to the said Governor-General in Council as aforesaid, or as the said Governor-General in Council shall from Time to Time require.

Presidency Governors to submit important papers to Governor-General in Council

69. And be it enacted, that it shall be lawful for the said Governor-General in Council, as often as the

Exigencies of the Public Service may appear to him to require, to appoint such one of the Ordinary Members of the said Council of India as he may think fit to be Deputy Governor of the said Presidency of Fort William in Bengal, and such Deputy Governor shall be invested with all the Powers and perform all the Duties of the said Governor of the Presidency of Fort William in Bengal, but shall receive no additional Salary by reason of such Appointment.

70. And be it enacted, that whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any Part of India unaccompanied by any member or members of the Council of India, it shall be lawful for the said Governor-General in Council, previously to the Departure of the said Governor-General, to nominate some Member of the Council of India to be President of the Council, in whom during the Absence of the said Governor-General from the said Presidency of Fort William in Bengal, the Powers of the said Governor-General in Assemblies of the said Council shall be reposed; and it shall be lawful in every such Case for the said Governor-General in Council, by a Law or Regulation for that Purpose to be made, to authorize the Governor-General alone to exercise all or any of the Powers which might be exercised by the said Governor-General in Council except the Power of making Laws or Regulations : Provided always, that during the Absence of the Governor-General no Law or Regulation shall be made by the said President and Council without the Assent in Writing of the said Governor-General.

\* \* \* \*

74. And be it enacted, that it shall be lawful for His Majesty, by any Writing under His Sign Manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any Office, Employment or Commission, Civil or Military, under the said Company in India, and to vacate any Appointment or Commission of any Person to any such Office or Employment ; provided that a

Copy of every such writing, attested by the said President, shall within Eight Days after the same shall be signed by His Majesty be transmitted or delivered to the Chairman or Deputy Chairman of the said Company.

75. Provided always, and be it enacted, that nothing in this Act contained shall take away the Power of the said Court of Directors to remove or dismiss any of the Officers or Servants of the said Company, but that the said Court shall and may at all Times have full Liberty to remove or dismiss any of such Officers or Servants at their Will and Pleasure ; provided that any Servant of the said Company appointed by His Majesty through the Default of Appointment by the said Court of Directors shall not be dismissed or removed without His Majesty's Approbation, as hereinbefore is mentioned.

Power of  
Court of  
Directors  
to dismiss  
Company's  
servants

76. And be it enacted, that there shall be paid to the several Officers hereinafter named the several Salaries set against the Names of such Officers, subject to such Reduction of the said several Salaries respectively as the said Court of Directors, with the Sanction of the said Board, may at any Time think fit : (that is to say,)

Salaries

To the Governor-General of India, Two hundred and Forty thousand Sicca Rupees :

To each Ordinary Member of the Council of India, Ninety-six thousand Sicca Rupees :

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, One hundred and twenty thousand Sicca Rupees :

To each Member of any Council to be appointed in any Presidency, Sixty thousand Sicca Rupees :

And the Salaries of the said Officers respectively shall commence from their respectively taking upon them the Execution of their respective Offices, and the said salaries shall be the whole Profit or Advantage which the said Officers shall enjoy during their Continuance in such Offices respectively ; and it shall be and it is hereby declared to be a Misdemeanor for any

such Officer to accept for his own Use, in the Discharge of his Office, any Present, Gift, Donation, Gratuity, or Reward, pecuniary or otherwise whatsoever, or to trade or traffic for his own Benefit or for the Benefit of any other person or persons whatsoever; and the said Court of Directors are hereby required to pay to all and singular the Officers and persons hereinafter named who shall be resident in the United Kingdom at the Time of their respective Appointments, for the Purpose of defraying the Expenses of their Equipment and Voyage, such Sums of Money as are set against the Names of such Officers and Persons respectively; (that is to say,)

To the Governor-General, Five thousand Pounds :

To each Member of the Council of India, One thousand two hundred Pounds :

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, Two thousand five hundred Pounds :

Provided also, that any Governor-General, Governor, or Member of Council appointed by or by virtue of this Act, who shall at the Time of passing this Act hold the Office of Governor-General, Governor, or member of Council respectively, shall receive the same Salary and Allowances that he would have received if this Act had not been passed.

77. Provided always, and be it enacted, that if any Governor-General, Governor, or Ordinary Member of the Council of India, or any Member of the Council of any Presidency, shall hold or enjoy any Pension, Salary, or any Place, Office, or Employment of Profit under the Crown or any Public Office of the said Company, or any Annuity payable out of the Civil or Military Fund of the said Company, the Salary of his Office of Governor-General of India, Governor or Member of Council, shall be reduced by the Amount of the Pension, Salary, Annuity, or Profits of Office so respectively held or enjoyed by him.

78. And be it enacted, that the said Court of Directors, with the Approbation of the said Board of

Commissioners, shall and may from Time to Time make Regulations for the Division and Distribution of the Patronage and Power of Nomination of and to the Offices, Commands, and Employments in the said Territories, and in all or any of the Presidencies thereof, among the said Governor-General in Council, Governor-General, Governors in Council, Governors, Commander-in-Chief and other Commanding Officers respectively appointed or to be appointed under this Act.

79. And be it enacted, that the Return to Europe or the Departure from India with Intent to return to Europe of any Governor-General of India, Governor, Member of Council, or Commander-in-Chief, shall be deemed in Law a Resignation and Avoidance of his Office or Employment, and that no Act or Declaration of any Governor-General, or Governor, or Member of Council, other than as aforesaid, excepting a Declaration in writing under Hand and Seal, delivered to the Secretary for the Public Department of the Presidency wherein he shall be, in order to its being recorded, shall be deemed or held as a Resignation or Surrender of his said Office; and that the Salary and other Allowances of any such Governor-General or other Officer respectively shall cease from the Day of such his Departure, Resignation, or Surrender; and that if any such Governor-General or Member of Council of India shall leave the said Territories, or if any Governor or other Officer whatever in the Service of the said Company shall leave the Presidency to which he shall belong, other than in the known actual Service of the said Company, the Salary and Allowances appertaining to his Office shall not be paid or payable during his Absence to any Agent or other Person for his Use; and in the event of his not returning, or of his coming to Europe, his Salary and Allowances shall be deemed to have ceased on the Day of his leaving the said Territories, or the Presidency to which he may have belonged; Provided that it shall be lawful for the said Company to make such Payment as is now by Law permitted to be made to the Representatives of

Resignation  
of Governor-  
General,  
Governor,  
and others

their Officers or Servants who, having left their Stations intending to return thereto, shall die during their Absence.

Disobedience to Court of Directors to be a misdemeanor 80. And be it enacted, that every wilful disobeying, and every wilful omitting, forbearing, or neglecting to execute the Orders or Instructions of the said Court of Directors by any Governor-General of India, Governor, Member of Council, or Commander-in-Chief, or by any other of the Officers or Servants of the said Company, unless in Cases of Necessity (the Burthen of the Proof of which Necessity shall be on the Person so disobeying or omitting, forbearing or neglecting, to execute such Orders or Instructions as aforesaid); and every wilful Breach of the Trust and Duty of any Office or Employment by any such Governor-General, Governor, Member of Council, or Commander-in-Chief, or any of the Officers or Servants of the said Company shall be deemed and taken to be a Misdemeanor at Law, and shall or may be proceeded against and punished as such by virtue of this Act.

\* \* \* \*

Removal of colour bar regarding appointments 87. And be it enacted, that no Native of the said Territories, nor any natural-born Subject of His Majesty resident therein, shall, by reason only of his Religion, Place of Birth, Descent, Colour, or any of them, be disabled from holding any Place, Office, or Employment under the said Company.

\* \* \* \*

Board of Control 109. And be it enacted, that every Power, Authority, and Function by this or any other Act or Acts given to and vested in the said Court of Directors shall be deemed and taken to be subject to such Control of the said Board of Commissioners as in this Act is mentioned, unless there shall be something in the Enactments conferring such Powers, Authorities, or Functions inconsistent with such Construction, and except as to any Patronage or Right of appointing to Office vested in or reserved to the said Court.

110. Provided always, and be it enacted, that nothing herein contained shall be construed to enable the said Board of Commissioners to give or cause to

be given Directions ordering or authorizing the payment of any extraordinary Allowance or Gratuity, or Increase of any established Salary, Allowance, or Emolument, unless in the Cases and subject to the Provisions in and subject to which such Directions may now be given by the said Board, or to increase the Sum now payable by the said Company on account of the said Board, except only by such Salaries or Allowances as shall be payable to the Officers to be appointed as hercinbefore is mentioned to attend upon the said Board during the winding up of the Commercial Bussiness of the said Company.

\* \* \* \*

115. And be it enacted, that it shall be lawful for any Court of Justice established by His Majesty's Charters in the said Territories to approve, admit and inrol Persons as Barristers, Advocates, and Attorneys in such Court without any License from the said Company, anything in any such Charter contained to the contrary notwithstanding: Provided always, that the being entitled to practise as an Advocate in the Principal Courts of Scotland is and shall be deemed and taken to be a Qulification for Admission as an Advocate in any Court in India equal to that of having been called to the Bar in England or Ireland.

King's  
Courts in  
India may  
admit  
Advocates  
and  
Attorneys  
without  
Company's  
license

116. And be it further enacted, that the Court of Directors of the said Company shall, within the first Fourteen sitting Days next after the First Day of May in every Year, lay before both Houses of Parliament an Account made up according to the latest Advices which shall have been received, of the annual Produce of the Revenues of the said Territories in India, distinguishing the same and the respective Heads thereof at each of their several Presidencies or Settlements, and of all their annual Receipts and Disbursements at Home and Abroad, distinguishing the same under the respective Heads thereof, together with the latest Estimate of the same, and also the Amount of their Debts, with the Rates of Interest they respectively carry, and the annual Amount of such Interest, the State of their Effects and Credits at each Presidency

Accounts  
to be  
annually  
laid before  
Parliament  
by Court of  
Directors

or Settlement, and in England or Elsewhere, according to the latest Advices which shall have been received thereof, and also a List of their several Establishments, and the Salaries and Allowances payable by the said Court of Directors, in respect thereof; and the said Court of Directors, under the Direction and Control of the said Board of Commissioners, shall forthwith prepare Forms of the said Accounts and Estimates in such Manner as to exhibit a complete and accurate View of the Financial Affairs of the said Company; and if any new or increased Salaries. Establishments, or Pensions shall have been granted or created within any Year, the Particulars thereof shall be specially stated and explained at the Foot of the Accounts of the said Year.

#### 42. MACAULAY'S SPEECH ON THE CHARTER ACT OF 1833.

(House of Commons, July 10, 1833).

It is a mistake to suppose that the Company was a merely commercial body till the middle of the last century. Commerce was its object; but in order to enable it to pursue that object, it had been, like the other Indian Companies which were its rivals, like the Dutch India Company, like the French India Company, invested from a very early period with political functions.<sup>1</sup> More than 120 years ago, it was in miniature precisely what it now is. It was intrusted with the very highest prerogatives of sovereignty. It had its forts and its white captains, and its black sepoy—it had its civil and criminal tribunals—it was authorized to proclaim martial law—it sent ambassadors to the native Governments, and concluded treaties with them—it was zamindar of several districts, and within those districts, like other zamindars of the first class, it exercised the powers of a sovereign, even to the infliction of capital punishment on the Hindoos within its jurisdiction. It is incorrect, therefore, to say, that the Company was at first a mere trader, and has since become a sovereign. It was at first a great trader and

Company  
invested  
with  
sovereign  
power  
from very  
early  
period

Growth of  
Company's  
political  
power

<sup>1</sup> Compare Burke's view—Document No. 27.



a petty prince. Its political functions at first attracted little notice, because they were merely auxiliary to its commercial functions. Soon, however, they became more and more important. The zamindar became a great nabob, became sovereign of all India—the 200 sepoys became 200,000. This change was gradually wrought, and was not immediately comprehended.

It is impossible to fix on any one day, or any one year, as the day or the year when the Company became a great potentate. It has been the fashion to fix on the year 1765, the year in which the Company received from the Mogul a commission authorizing them to administer the revenues of Bengal, Bahar, and Orissa, as the precise date of their sovereignty. I am utterly at a loss to understand why this period should be selected. Long before 1765 the Company had the reality of political power. Long before that year, they made a Nabob of Arcot; they made and unmade Nabobs of Bengal; they humbled the Vizier of Oude; they braved the Emperor of Hindoostan himself. More than half the revenues of Bengal, as Lord Clive stated, were under one pretence or another administered by them. And after the grant, the Company was not, in form and name, an independent power. It was merely a Minister of the Court of Delhi. Its coinage bore the name of Shah Alum.<sup>1</sup> The inscription which, till the time of Lord Hastings, appeared on the seal of the Governor-General declared that great functionary to be the slave of the Mogul. Even to this day, we have never formally deposed the King of Delhi. The Company contents itself with being Mayor of the Palace, while the *roi fainéant* is suffered to play at being a sovereign. In fact, it was considered, both by Lord Clive, and by Warren Hastings, as a point of policy to leave the character of the Company thus undefined, in order that the English might treat the princes in whose names they governed as realities or nonentities, just as might be most convenient.....

Significance  
of Dewani

Nature of  
Company's  
*de facto*  
power

\* \* \* \*

<sup>1</sup> The right of issuing independent coinage in the name of the British sovereign was not assumed till 1835.

**India should be governed through the Company** We come then to the great question : Is it desirable to retain the Company as an organ of Government for India ? I think that it is desirable We have to solve one of the hardest problems in politics. We are trying to make brick without straw—to bring a clean thing out of an unclean—to give good Government to a people to whom we cannot give a free Government

**India unfit for representative institutions** If the question were, what is the best mode of securing good Government in Europe, the merest smatterer in politics would answer—representative institutions. In India, you cannot have representative institutions. Of all the innumerable speculators who have offered their suggestions on Indian politics, not a single one, however democratical his opinions may be, has ever maintained the possibility of giving, at the present time, such institutions to India, Mr. Mill<sup>1</sup> was examined on the point. That gentleman is well known to be a very bold and uncompromising politician. He has written strongly—far too strongly, I think—in favour of pure democracy

**View of James Mill** But when he was asked before the committee of last year, whether he thought representative Government practicable in India, his answer was—‘utterly out of the question.’ This, then, is the state in which we are. We have to frame a good Government for a country into which, by universal acknowledgement, we cannot introduce those institutions which all our habits—which all the reasoning of European Philosophers—which all the history of our own part of the world would lead us to consider as the one great security for good Government. We have to engraft on despotism those blessings which are the natural fruits of liberty. In these circumstances, sir, it behoves us to be cautious, even to the verge of timidity

Some things, however, in the midst of this obscurity, I can see with clearness. I can see, for example, that it is desirable that the authority exercised in this country over the Indian Government should be divided between two bodies—between a Minister or a board appointed by the Crown, and some other body

<sup>1</sup> James Mill.

independent of the Crown. If India is to be a dependency of England—to be at war with our enemies—to be at peace with our allies—to be protected by the English navy from maritime aggression—to have a portion of the English army mixed with its sepoys—it plainly follows, that the King, to whom the constitution gives the direction of foreign affairs, and the command of the military and naval forces, ought to have a share in the direction of the Indian Government. Yet, on the other hand, that a revenue of twenty millions a year—an army of 200,000 men—a civil service abounding with lucrative situations—should be left to the disposal of the Crown without any check whatever, is what no Minister, I conceive, would venture to propose. This House is indeed the check provided by the constitution on the abuse of the royal prerogative. But that this House is, or is likely ever to be, an efficient check on abuses practised in India, I altogether deny. We have, as I believe we all feel, quite business enough. If we were to undertake the task of looking into Indian affairs as we look into British affairs—if we were to have Indian budgets and Indian estimates—if we were to go into the Indian currency question and the Indian Bank Charter—if to our disputes about Belgium and Holland, Don Pedro and Don Miguel, were to be added disputes about the Debts of the Guicowar and the disorders of Mysore, the ex-King of the Afghans<sup>1</sup> and the Maharajah Runjeet Sing—if we were to have one night occupied by the embezzlements of the Benares Mint, and another by the panic in the Calcutta money-market—if the questions of Suttee or no Suttee, pilgrim tax or no pilgrim tax, ryotwary or zemindary, half batta or whole batta, were to be debated at the same length at which we have debated church reform and the assessed taxes, 24 hours a day and 365 days a year would be too short a time for the discharge of our duties. The House, it is plain, has not the necessary time to settle these matters; nor has it the necessary knowledge, nor has it motives to acquire that knowledge.....A broken

Government of India should be entrusted to two bodies—one under the Crown, and one independent of the Crown

Powers of the Crown relating to India should be checked

Parliament cannot check abuses in Indian administration

Parliament has no time to discuss details of Indian administration

<sup>1</sup> Shah Shuja.

Parliament  
has no  
knowledge  
of Indian  
affairs and  
no interest  
in them

head in Cold Bath Fields produces a greater sensation among us than three pitched battles in India. Even when the President of the Board of Control<sup>1</sup> made his most able and interesting statement of the measures which he intended to propose for the Government of a hundred millions of human beings, the attendance (in the House of Commons) was not so large as I have seen it on a turnpike bill or a rail-road bill.

I then take these things as proved, that the Crown must have a certain authority over India, that there must be an efficient check on the authority of the Crown, and that the House of Commons is not an efficient check. We must then find some other body to perform that important office. We have such a body—the Company. Shall we discard it?

It is true, that the power of the Company is an anomaly in politics. It is strange—very strange—that a joint-stock society of traders—a society the shares of which are daily passed from hand to hand—a society, the component parts of which are perpetually changing

should be intrusted with the sovereignty of a larger population, the disposal of a larger clear revenue, the command of a larger army, than are under the direct management of the executive Government of the United Kingdom. But what constitution can we give to our Indian Empire which shall not be strange—which shall not be anomalous? That Empire is itself the strangest of all political anomalies. That a handful of adventurers from an island in the Atlantic should have subjugated a vast country divided from the place of their birth by half the globe.... a territory inhabited by men differing from us in race, colour, language, manners, morals, religion;—these are prodigies to which the world has seen nothing similar. We interrogate the past in vain. General rules are almost useless where the whole is one vast exception. The Company is an anomaly; but it is part of a system where everything is anomaly. It is the strangest of all Governments: but it is designed for the strangest of all Empires.

Political  
power of  
the Com-  
pany is an  
anomaly

British  
rule in  
India is an  
anomaly

<sup>1</sup> Charles Grant.

If we discard the Company, we must find a substitute : and, take what substitute we may, we shall find ourselves unable to give any reason for believing that the body which we have put in the room of the Company is likely to acquit itself of its duties better than the Company. Commissioners appointed by the King during pleasure would be no check on the Crown ; Commissioners appointed by the King or by Parliament for life would always be appointed by the political party which might be uppermost, and if a change of administration took place, would harass the new Government with the most vexatious opposition. What we want is a body independent of the Government, and no more than independent—not a tool of the treasury—not a tool of the opposition. No new plan which I have heard proposed would give us such a body. The Company, strange as its constitution may be, is such a body. It is, as a corporation, neither Whig nor Tory, neither high-church, nor low-church. It has constantly acted with a view, not to English politics but to Indian politics. We have seen the country convulsed by faction<sup>1</sup>. And amidst all these agitating events the Company has preserved strict and unsuspected neutrality. This is, I think, an inestimable advantage

Substitute  
for Com-  
pany not  
available

An indepen-  
dent body  
wanted

Company's  
neutrality  
in English  
politics

We must judge of the Indian Government, as of all other Governments, by its practical effects. According to the Hon. Member for Sheffield, India is ill governed; and the whole fault is with the Company. Innumerable accusations, great and small, are brought by him against their administration. They are fond of war. They are fond of dominion. The taxation is burthensome. The laws are undigested. The roads are rough. The post goes on foot. And for everything the Company is answerable. From the dethronement of the Mogul princes to the mishaps of Sir Charles Metcalfe's courier, every disaster that has taken place in the East during sixty years is laid to the charge of this unfortunate corporation. And the inference is, that all the power which they possess ought to be taken

Charges  
against  
Company's  
adminis-  
tration

<sup>1</sup> Agitation concerning the First Reform Bill.

out of their hands, and transferred at once to the Crown.

Now, sir, it seems to me that for all the evils which the Hon. Gentleman has so pathetically recounted, the Ministers of the Crown are as much to blame as the Company—nay, much more so. For the Board of Control could, without the consent of the Directors, have redressed those evils : and the Directors most certainly could not have redressed them without the consent of the Board of Control

Ministers  
must share  
responsi-  
bility for  
defects in  
Company's  
adminis-  
tration

Do I call the Government of India a perfect Government ? Very far from it. No nation can be perfectly well governed till it is competent to govern itself. I compare the Indian Government with other Governments of the same class, with despotisms, with military despotisms, with foreign military despotisms ; and I find none that approaches it in excellence. I compare it with the Government of the Spanish colonies—and I am proud of my country and my age .

India  
better  
governed  
than  
Spanish  
colonies

One word as to the new arrangement which we propose with respect to the patronage. It is intended to introduce the principle of competition in the disposal of writerships ; and from this change I cannot but anticipate the happiest results.... India is entitled to the service of the best talents which England can spare. That the average of intelligence and virtue is very high in this country, is a matter for honest exultation. But it is no reason for employing average men where you can obtain superior men .... It is proposed that for every vacancy in the civil service four candidates shall be named, and the best candidate elected by examination. We conceive that, under this system, the persons sent out will be young men above par—young men superior either in talents or in diligence to the mass. It is said, I know, that examinations in Latin, in Greek and in Mathematics are no tests of what men will prove to be in life.<sup>1</sup> I am perfectly aware that they are not

Patronage

Civil  
Service  
thrown  
open to  
limited  
competi-  
tion

<sup>1</sup> Here is a description of the present system in the United States : " The civil service authorities have had to use exami-

infallible tests ; but that they are tests I confidently maintain. Look at every walk of life—at this House—at the other House—at the Bar—at the Bench—at the Church—and see whether it be not true, that those who attain high distinction in the world are generally men who were distinguished in their academic career

Value of academic scholarship

\* \* \* \*

we propose to give to the Supreme Government the power of legislating for Europeans as well as for natives. We propose that the regulations of the Government shall bind the King's Court<sup>1</sup> as they bind all other courts, and that registration by the Judges of the King's Court shall no longer be necessary to give validity to those regulations within the towns of Calcutta, Madras, and Bombay.

Law-making power of Supreme Government extended  
Supreme Court's right of registering regulations abolished

is it not most unjust and ridiculous that on one side of a ditch<sup>2</sup> the edict of the Governor-General should have the force of law, and on the other side it should be of no effect unless registered by the Judges of the Supreme Court? If the registration be a security for good legislation, we are bound to give that security to all classes of our subjects. If the registration be not a security for good legislation, why require it? Why give it to a million of them, and withhold it from the other ninety-nine millions? Is the system good? Extend it. Is it bad? Abolish it. But in the name of common sense do not leave it as it is. doubts may fairly be entertained about the expediency of allowing four or five persons<sup>3</sup> to

Should Supreme Court be invested with power of approving or disapproving laws?

nations because no other method of testing fitness has been open to them. Written and oral tests have been their chief reliance, supplemented of course by information secured in other ways as to the merits of candidates. But formal examinations, as every teacher knows, are very undependable agencies for testing personal merit. They are poor tests of such qualities as initiative, industry, honesty, tact, patience, resourcefulness ; yet these are qualities which spell success in public as in private employ."—Munro, *The Government of the United States*, p. 591.

<sup>1</sup> Supreme Court.

<sup>2</sup> Maratha ditch around Calcutta.

<sup>3</sup> Governor-General-in-Council.

make laws for India ; but to allow them to make laws for all-India without the Mahratta ditch, and to except Calcutta, is the height of absurdity.

I say, therefore, either enlarge the power of the Supreme Court and give it a general veto on laws, or enlarge the power of the Government, and make its regulations binding on all Courts without distinction. The former course no person has ventured to propose.

**Conflict between Supreme Court and Government** To the latter course objections have been made,—but objections which to me seem altogether frivolous. It is acknowledged, that of late years inconvenience has arisen from the relation in which the Supreme Court stands to the Government.<sup>1</sup> But, it is said, that Court was originally instituted for the protection of natives against Europeans. The wise course would, therefore, be to restore its original character.

**Mischievous activities of the Supreme Court in the days of Warren Hastings** Now, sir, the fact is, that the Supreme Court has never been so mischievous as during the first ten years of its power, or so respectable as it has lately been for a considerable time after its institution, it was the terror of Bengal, the scourge of native informants, the screen of European delinquents, a convenient tool of the Government for all purposes of evil, an insurmountable obstacle to the Government in all undertakings for the public good ;— its proceedings were made up of pedantry, cruelty, and corruption;—its disputes with the Government were at one time on the point of breaking up the whole fabric of society; and a convulsion was averted only by the dexterous policy of Warren Hastings, who at last bought off the opposition of the Chief Justice for £8,000 a year. It is notorious, that while the Supreme Court opposed Hastings in all his best measures, it was a thorough-going accomplice in his worst—that it took part in the most scandalous

**Conflict between Supreme Court and Government in Bombay** <sup>1</sup> A serious conflict between the Supreme Court and Government of Bombay arose in 1828. The Supreme Court claimed that its jurisdiction extended over the whole Presidency and over every person residing within the Company's territories. Sir John Malcolm, Governor of Bombay, resisted this 'novel and startling' doctrine for, in his view, it 'threatened the very existence of the Company's Government.' The Privy Council decided against the Supreme Court. See Kaye, *Life of Malcolm*, Vol. II, pp. 506—540.



of those proceedings which fifty years ago roused the indignation of Parliament and of the country—that, it assisted in the spoliation of the Princesses of Oude<sup>1</sup>—that it passed sentence of death on Nuncomar.<sup>2</sup>

Sir, so far is it from being true that the character of the Supreme Court has deteriorated, that it has perhaps improved more than any other institution in India. The real evil is the state of the law. You have two supreme powers in India. There is no arbitrator except a legislature ten thousand miles off. Such a system is on the face of it an absurdity in politics. My wonder is, not that this system has several times been on the point of producing fatal consequences to the peace and resources of India,—these, I think, are the words in which Warren Hastings describes the effect of the contest between his Government and the Judges—but that it has not actually produced such consequences. The most distinguished Members of the Indian Government—the most distinguished Judges of the Supreme Court—call upon you to reform this system. Sir Charles Metcalfe, Sir Charles Grey, represent with equal urgency the expediency of having one single paramount council armed with legislative power.

Anomalous relation between Supreme Court and Government

There should be one body for legislation

Having given to the Government supreme legislative power, we next propose to give to it for a time the assistance of a commission for the purpose of digesting and reforming the laws of India, so that those laws may, as soon as possible, be formed into a code.....

Law Commission for codification of Indian laws

I believe that no country ever stood so much in need of a code of laws as India, and I believe also that there never was a country in which the want might so easily be supplied....in India....there are several systems of law widely differing from each other, but co-existing and co-equal. The indigenous population has its own laws. Each of the successive races of conquerors has brought with it its own peculiar jurisprudence: the Mussulman his Koran and its innumer-

Codification rendered necessary by confusion of laws

<sup>1</sup> See Mill, *History of India*, Book V, Chapter VIII.

<sup>2</sup> See Beveridge, *Trial of Nandakumar*. For a justification of the Supreme Court see Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*.

able commentaries—the Englishman his statute-book, and his term reports. In one and the same cause the process and pleadings are in the fashion of one nation, the judgment is according to the laws of another. An issue is evolved according to the rules of Westminster, and decided according to those of Benares. The only Mahometan book in the nature of a code is the Koran;—the only Hindoo book the Institutes<sup>1</sup>; Everybody who knows these books, knows that they provide for a very small part of the cases which must arise in every community. All beyond them is comment and tradition. Our regulations in civil matters do not define rights; they merely establish remedies. If a point of Hindoo Law arises, the judge calls on the Pundit for an opinion. If a point of Mahometan law arises, the judge applies to the Cauzee. What the integrity of these functionaries is, we may learn from Sir William Jones. Even if there were no suspicion of corruption, the science which they profess is in such a state of confusion that no reliance can be placed on their answers. Sir Francis Macnaghten tells us, that texts may be produced on any side of any question; that expositors equal in authority perpetually contradict each other; that it is vain to think of extracting certainty from the books of the jurists. The consequence is that in practice the decisions of the tribunals are altogether arbitrary. What is administered is not law, but a kind of rude and capricious equity. . . .

. . . It is time that the magistrate should know what law he is to administer—that the subject should know under what law he is to live. We do not mean that all the people of India should live under the same law: far from it: there is not a word in the Bill. . . . susceptible of such an interpretation. . . . We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this—uniformity where you can have it—

Insufficiency and defects of Hindu and Muslim law

Certainty of law required, but uniformity not to be insisted upon

<sup>1</sup> *Manu Samhita.*

diversity where you must have it—but in all cases certainty.

As I believe that India stands more in need of a code than any other country in the world, I believe also that there is no country on which that great benefit can more easily be conferred. A code is almost the only blessing—perhaps it is the only blessing which absolute Governments are better fitted to confer on a nation than popular Governments. It is the work which especially belongs to a Government like that of India—to an enlightened and paternal despotism.<sup>1</sup>

Enlightened  
and  
paternal  
despotism  
best fitted  
to codify  
laws

I allude to that wise, that benevolent, that noble clause, which enacts that no native of our Indian Empire shall, by reason of his colour, his descent, or his religion, be incapable of holding office. I must say that, to the last day of my life, I shall be proud of having been one of those who assisted in the framing of the Bill which contains that clause. We are told that the time can never come when the natives of India can be admitted to high civil and military office. We are told that this is the condition on which we hold our power. We are told, that we are bound to confer on our subjects—every benefit which we can confer on them without hazard to our own domination. Against that proposition I solemnly protest as inconsistent alike with sound policy and sound morality.

Removal of  
Indians'  
ineligibility  
for offices

The destinies of our Indian Empire are covered with thick darkness. It may be that the public mind of India may expand under our system till it has outgrown that system; that by good Government we may educate our subjects into a capacity for better Government; that, having become instructed in European knowledge, they may, in some future age, demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or to retard it. Whenever it comes, it will be

Destiny of  
India

<sup>1</sup> Macaulay himself drafted the Indian Penal Code in 1837, when he was Law Member in the Supreme Council. It was revised by Sir Barnes Peacock and finally adopted by Lord Canning in 1860.

the proudest day in English history. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own. The sceptre may pass away from us. Victory may be inconstant to our arms. But there are triumphs which are followed by no reverses. There is an Empire exempt from all 'natural causes of decay. Those triumphs are the pacific triumphs of reason over barbarism ; that Empire is the imperishable empire of our arts and our morals, our literature and our laws.

Real  
greatness  
of British  
rule in  
India

#### 43. DESPATCH ON THE CHARTER ACT OF 1833 FROM THE COURT OF DIRECTORS TO THE GOVERNMENT OF INDIA, 1834. (December 10, 1834).

4. The changes which the Act contemplates in the Government and political constitution of British India are partly prospective and partly immediate. The state of things at which it aims in prospect is that which is comprehensively described in the preambulatory part of the 53rd Clause, when a general system of justice and policy, and a code of laws, common (as far as may be) to the whole people of India, and having its varieties classified and systematized, shall be established throughout the country. The preparation of such a system and such a code must be set about immediately ; and it is principally with a view to that object, and for the purpose of collecting and arranging the necessary materials, and of advising the Government as to the disposition of them that the Law Commissioners are to be appointed. But with whatever celerity those Commissioners proceed, their task cannot be completed in a day. The Act indeed asserts, or rather assumes, it to be expedient that the general system on prospect "should be established in the said Territories at an early period" : but early is a word of relation. No time should be lost by delay : none should be worse than lost by precipitation. The care-

Changes  
contem-  
plated—  
'partly  
prospective  
and partly  
immediate'

Prepara-  
tion of a  
code of  
law 'com-  
mon to  
the whole  
people  
of India'

Law  
Commission

ful observance of these two conditions will practically determine the length of time required.

5. Thus, however, besides that ultimate state of things to which the Act looks forward, it contemplates an intermediate period ; a period of enquiry, of consideration, of preparation, in some degree even of experiment ; and it is to this interval that several of its provisions relate. As the labours of the Law Commissioners are intended to fill up the whole of this interval, one principal care of the Government will be to guide the course and promote the efficiency, of those labours ; and this is plainly contemplated by the Act which, however, does not limit itself to this view of the subject. Without awaiting the result of enquiries and deliberation of the Commissioners it proceeds at once to change the constitution of the Indian Government by investing the Governor-General in Council with legislative powers of a new and independent kind, by extending the operation of those powers over the subordinate Governments, and by so modifying the structure of the Supreme Council internally as to adapt it to the discharge of its altered functions.

'New and independent' legislative powers of Governor-General in Council

6. At first sight this change may perhaps appear premature. It may seem that the more natural course would have been to leave the Government, for the present, nearly as it is, or at least to withhold from it the extensive powers of legislation which it is to exercise under the Act ; and, when the Commissioners shall have so far completed their enquiries and deliberations as to make it practicable to adopt a general scheme of law, judicature and police, then, and no sooner, to alter the constitution of the Government with an especial reference to that new sphere of action which it will have to enter.

Justification of changing constitution of Supreme Council before preparation of Law Code :

7. But reflection will, as we believe, shew that the legislature has judged wisely, or rather has only obeyed a moral necessity in introducing immediately and without delay, the important alterations to which we have referred.

8. Although some time may elapse before the whole people of India, native and foreign, can be placed

under one common system, yet it is highly desirable that approximations should previously be made to that result. In this view, it will often be advantageous to act on the suggestions of the Commissioners partially and experimentally; thus facilitating as well as accelerating the introduction of the system in question. But in order to act on this plan, it is obviously necessary that the Local Government should have the means of legislating freely and with effect; that it should be able to shape its course according to its own view, both of the results to be ultimately accomplished, and of the circumstances to be intermediately consulted; and at any rate that some of the anomalies which at present belong to the frame of the Government should be from time to time removed.

9. There were, however, other considerations which, much more strongly than these, dictated such alterations in the Government as should enable it to legislate for a great community. The act unsealed for the first time the doors of British India to British subjects of European birth. Hitherto the English in India have been there only on sufferance. Now they have acquired a right, however qualified, to live in the country and even to become occupants of land, and there is every prospect of a considerable increase of their numbers. It is therefore necessary that the Local Governments should have full means of dealing with them, not merely in extreme cases, and by a transcendental act of authority, but in the current and ordinary exercise of its functions and through the medium of laws carefully made and promptly and impartially administered. On no other condition could the experiment of free ingress of Europeans be safely tried.

10. While new legislative powers are conferred on the Supreme Government, the legislative powers hitherto possessed by the subordinate Governments are to be modified and abridged. On this topic we need hardly refer to the discussions which have of late years taken place both in India and in England on the best mode of constituting the Indian Governments; the decisive consideration with the legislature probably was the

necessity of strengthening the Supreme Government in consequence of the free admission of Europeans into the interior of the country.

11. In whatever way the Europeans may disperse themselves throughout India, they will be united together by a powerful sympathy and will in fact maintain a constant communication. It is therefore both just and natural that they should live under the control of the same laws; nor would it be easy to legislate in reference to a part of them without keeping in view the whole body. It is specially to be recollected that the task of legislating in India for Europeans 'naturalized in the country and not dependent on the Government is altogether new and experimental. The difficulties of this task may have been overrated, but undoubtedly they are not slight or evanescent, and they would be much aggravated if the different Governments were all armed with co-equal and independent legislative powers, and if they were to proceed to exercise such powers at their discretion respectively, and perhaps with very different views and according to inconsistent principles. While, therefore, it is important in reference to the admission of Europeans into the interior, that the subordinate Governments, commanding as they do different regions of the empire, should have their executive capacities and even that a new station should be added to them in the north of India, yet there seem good reasons for collecting and uniting all the functions of legislation in one central and metropolitan government.

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Centralisation of legislation rendered necessary by the 'free ingress' of Europeans

15. The first principle is that no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion.

16. . . . In this country the length and publicity of the process by which a law passes from the shape of a project into that of a complete enactment, and the conflict of opinions through which the transit must be made, constitute a security against rash or thoughtless legislation. There may indeed be exceptions, for there

Procedure to be followed by Supreme Council in law-making

are cases in which the pressure of popular feeling forces a law prematurely into existence We deem it of great moment, therefore, that you should by positive rules provide that every project or proposal of a law shall travel through a defined succession of stages in Council before it is finally adopted ; that at each state it shall be amply discussed ; and that the intervals of discussion shall be such as to allow to each Member of Council adequate opportunity of reflection and enquiry.

•            •            •            •

18. Provision must of course be made for extreme cases, and in the last resort the ultimate power specially reserved by the 49th clause of the new Act to the Governor-General of acting singly and on his own responsibility, will afford a refuge from the possible evil of distracted counsels and infirm resolutions. But the occasions which compel the use of these extreme remedies rarely occur in well-governed states ; and in general, we are persuaded that in a punctual, constant, and even fastidious adherence to your ordinary rules of practice, you will find the best security, not only for the efficiency, but also for the despatch of your legislative proceedings.

19. While thus considering the deliberative part of your duties, our attention is necessarily led to one important alteration which the Act has made on the constitution of the Supreme Council. We allude to the appointment of the fourth ordinary member of Council, as described in the 40th Clause.

20. In the first and simplest view of this remarkable provision, the presence and assistance of the fourth counsellor must be regarded as a substitute for that sanction of the Supreme Court of Judicature which has hitherto been necessary to the validity of regulations affecting the inhabitants of the Presidencies, but which under the new system, will no longer be required. It is, however, evident that the view of the legislature extended beyond the mere object to providing such a substitute.

21. The concurrence of the fourth member of



Council may be wanting to a law, and the law may be good still, even his absence at the time of enactment will not vitiate the law, but Parliament manifestly intended that the whole of his time and attention and all the resources of knowledge and ability which he may possess, should be employed in promoting the due discharge of the legislative functions of the Council. He has indeed no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share, not only in the task of giving shape and connexion to the several laws as they pass, but also in the mighty labour of collecting all that local information, and calling into view all those general considerations which belong to each occasion, and of thus enabling the Council to embody the abstract and essential principles of good government in regulations adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway.

Duties of  
'Fourth  
Ordinary  
Member  
of Council'

22. It is to be observed that the fourth member is declared not to be entitled to sit or vote in the Council, except at meetings for the making of laws and regulations.

23. We do not, however, perceive that you are precluded by anything in the law from availing yourselves of his presence without his vote on any occasion on which you may think it desirable; and on many, if not all, of the subjects on which your deliberation may turn, an intimate knowledge of what passes in Council will be of essential service to him in the discharge of his legislative functions. Unless he is in habits of constant communication and entire confidence with his colleagues, unless he is familiar with the details of internal administration, with the grounds on which the Government acts, and with the information by which it is guided, he cannot possibly sustain his part in the legislative conferences or measures with the knowledge, readiness, and independence essential to a due performance of his duty.

'Fourth  
Ordinary  
Member'  
may, and  
should,  
attend  
Council  
even when  
its agenda  
does not  
include  
law-making

24. .... It should, we think, be open to every

Initiative member of the Council, to propose any law or regulation for adoption and his proposal should be taken into discussion, even though he should, at the outset, stand alone in his opinion. In deliberative assemblies every differently and more numerous constituted no member of the proposition can be entertained which is not seconded, as well as moved. The reasonableness of the rule is obvious, but in the deliberations of a small and select body, we do not think that the same condition should be enforced.

25. Another point, not less important, is to provide that in the work of legislation, you shall as far as may be practicable avail yourselves of external aid. Persons who are not members of your body may afford you valuable assistance, either by suggesting laws that are required, or by pointing out what is improbable or objectionable, in the drafts or projects of laws under consideration.

Initiative in law-making may be taken by subordinate Governments 26. With respect to the suggestion of new laws, the Act (by Clause 66) expressly requires you to take into consideration the drafts or projects of laws or regulations which any of the subordinate Governments may propose to you. The Act also, we need not say, contemplates constant communications from the Law Commissioners, which communications are intended to furnish the grounds or the materials for legislation. Useful intimations may also be derived from the Public Boards, from the Judges of the Supreme Court, from all persons, whether Native or European, invested with a judicial character or holding official stations of eminence, from all Colleges and other constituted bodies, perhaps from the Native heads of villages, or even private individuals of personal weight and influence. We do not mean that these Parties should by law be entitled to call on the legislature to discuss such suggestions, or to come to any decision respecting them. No such right belongs to those who petition to the Houses of Parliament in this country. We mean only that their suggestions should be received and should even be invited.

27. Not less material is the other object to which

we have adverted, that of taking the opinions of the community, or of influential persons, on the projects of law under consideration; an advantage which in England is secured by the publicity of the discussions in Parliament, and by the time which the passing of an Act requires; but which can be obtained in India only by making special provision for it

28. All, therefore, that we should require would be that, with such exceptions as you may deem requisite with a view to the progress of current and ordinary legislation, the project of intended laws shall be so made known to the Public as to afford opportunities to the persons or classes whom they may particularly affect, to offer their comments or complaints to the legislature; and that the rule which you at any time prescribe to yourselves for the purpose shall be submitted to the consideration of the Authorities at home.

Projects of intended laws should be made known to the public.

35. Heretofore you have been invested with executive powers of superintendence over the legislation of the subordinate Presidencies. But as those Presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests on you; and every law which has an especial reference to the local interests of any of those Presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be preconsidered by you with as deep and as anxious attention as if it affected only the welfare of the Presidency in which you reside. You may indeed, as we have already observed, receive from the subordinate Presidencies suggestions or drafts of laws and these it may frequently be expedient to invite. But in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the offspring of your own minds, after obtaining an adequate knowledge of the case. We say this knowing as we do, how easily the

In law-making, Supreme Government should pay 'deep and anxious attention' to interests and welfare of territories under subordinate Governments

power of delegating a duty degenerates into the habit of neglecting it; and dreading lest at some future period, under the form of offering projects of laws, the subordinate Presidencies should be left to legislate for themselves, with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their own hands.

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Difficulty  
of legis-  
lating  
for India

37. In contemplating the extent of legislative powers thus conferred immediately on our Supreme Government, and in the second instance on ourselves, in considering that in the use of this power the difference between the worst and the best of Governments mainly depends, in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable, in adverting to the countless variety of interests to be studied and of difficulties to be overcome in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we with you are conjointly laid. Whatever means or efforts can be employed on the occasion, whatever can be effected by free and active discussion, or by profound and conscientious deliberation; whatever aids can be derived from extrinsic counsel or intelligence, all at the utmost will be barely commensurate with the magnitude of the sphere to be occupied, and of the service to be performed. We feel confident that to this undertaking your best thoughts and care will be immediately and perseveringly applied; and we invite the full, the constant, and the early communication of your sentiments in relation to it. On our part, we can venture to affirm that no endeavour shall be wanting in promoting your views and perfecting your plans. Others also who are in a situation, by advice or exertion, to assist in the work, will contribute to it, we hope, to the extent of their power, and we trust that by the blessing of Divine Providence on our united labours, the just and beneficent intentions of this country, in delegating to our hands the legislative as well as the executive administration of the

Necessity of  
close co-  
operation  
between  
London  
and  
Calcutta

mightiest, the most important, and the most interesting of its transmarine possessions, will be happily accomplished.

39. For this subject we particularly refer you to the 43rd, 46th, 81st, 82nd, 83rd, 84th, 85th and 86th clauses of the Act.

40. These Clauses bring into view the legislative duties which will be imposed on you by the free admission now to be afforded to British subjects into the interior of India, among the first of which duties will be the obligation of providing, as directed by the 85th clause, for the protection of the natives from insult and outrages in their persons, properties, religions and opinions.

Dut of protecting Indians from Europeans in India

41. The importance and indeed the absolute necessity of extending to the natives such protection we need not demonstrate. Though English capitalists settling in the country, if they are governed by an enlightened sense of their own interests, will see the importance of acquiring the confidence of their native neighbours by a just and conciliatory course of conduct, yet even some of this class may yield to the influence of worse motives. Eagerness for some temporary advantages, the consciousness of power, the pride of a fancied superiority of race, the absence of any adequate check from public opinion, the absence also in many cases of the habitual check supplied by the stated and public recurrence of religious observances—these and other causes may occasionally lead even the settled resident to be less guarded in his treatment of the people than would accord with a just view of his situation. Much more may acts of outrage or insolence be expected from casual adventurers cut off possibly from Europe by the consequences of previous misconduct, at all events, released from the restraints which in this country the overawing influence of society imposes on all men not totally abandoned. The greater necessity is there that such persons should be placed under other checks.

Maltreatment of Indians by Europeans apprehended

43. Whatever provision may be made against occasional abuse, the views of Parliament in opening the interior of India to Europeans are to be carefully kept in recollection. The Clauses which effect this

Why great alteration in our Indian policy are not restraining Europeans but enabling enactments. The legislature has avowedly proceeded on the principle, that generally speaking and allowed 'free on the whole, the increased entrance of the Europeans ingress' into the interior of India, their increased power of into India blending their interests with those of the country, and their increased opportunity of freely associating with the natives, will prove beneficial to the native people, and promotive of their general improvement and prosperity. That which the legislature has thus assumed is also to be assumed by us and by you. Your

In framing laws for executive proceedings in relation to the admission and Europeans settlement of Europeans, like that law of the Imperial in India, Legislature out of which they grow, must generally Supreme Government speaking and on the whole be framed on a principle should follow 'a not of restriction but of encouragement' not of restriction but of encouragement' purpose of placing and keeping them within the supervision of an all seeing Police, must not be more than necessary for that object. The regulations which you shall make with the just and humane design of protecting the natives from ill-treatment must not be such as to harass the European with any unnecessary restraints or to give him uneasiness by the display of improper distrust and suspicion. Laws passed in such a spirit tend to produce the very mischiefs which they aim at preventing. To the evil-minded they suggest evil; they furnish the discontented with materials or pretexts for clamour, and they irritate the peaceably disposed into hostility.

\* \* \*

57. The means which the present Act affords you of applying the remedy referred to are set forth in the 43rd, 45th and 46th Clauses. By the first of these, the laws and regulations which you make under the Act

are to bind all Courts of Justice whether chartered by the King or not, and their jurisdictions, and also all places and things throughout the territories of British India. By the 45th Clause your laws and Regulations are to be taken notice of by all Courts of Justice within those territories and they need not be registered in any Court. By the 46th Clause you are restrained from making without our previous sanction any Law or Regulation which shall empower any Courts other than those chartered by the King to sentence British subjects, or their children to death, or which shall abolish the Courts so chartered. In respect to the last-mentioned Clause we certainly should not without much consideration give our sanction to the important changes there referred to and for the present those changes may be regarded as out of view. . Your Laws and Regulations no longer require to be authenticated by registration in the Supreme Courts, and they, notwithstanding, bind those Courts and must be noticed by them without being specially pleaded or proved. This is the known privilege of sovereign legislation. Beyond this you are expressly authorized to make laws for the jurisdiction of the Supreme Courts, a most material qualification as we conceive of the inability to abolish them; since in virtue of this authority you may reduce the extent or circumscribe the sphere of their judicial power in any degree consistent with their retaining their essential character.

Supreme Government empowered to make laws and regulations binding on all courts, places and things in British India

Restriction on law-making power of Supreme Government

Laws no longer to be authenticated by registration in Supreme Courts

58. With regard to British-born subjects, when the Act says that you shall not pass laws making them capitally punishable otherwise than by the King's Courts, it does by irresistible implication authorize you to subject them in all other criminal respects and in all civil respects whatever to the ordinary tribunals of the Country. We know not indeed that there is any crime for which, within this Clause, they may not be made amenable to the Country tribunals, provided that the law in giving those tribunals jurisdiction over the crime shall empower them to award to it some other punishment than death.

Provision about British-born subjects

British-born subjects to be subjected to same Courts as Indians 59. From these premises there are some practical inferences to which we must call your attention. First, we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the Natives. It is of course implied in this proposition that in the interior they shall be subjected to the Mofussil Courts. So long as Europeans, penetrating into the interior, held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a foreign power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are to become inhabitants of India, they must share in the judicial liabilities as well as in the civil rights pertaining to that capacity, and we conceive that their participation in both should commence at the same moment.

Protection of Indians from maltreatment by Europeans cannot be assured unless they are subjected to same Courts 60. It is not merely on principle that we arrive at this conclusion. The 85th Clause of the Act, to which we have before referred, after reciting that the removal of restriction on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage—an obligation which in our view you cannot possibly fulfil, unless you render both Natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.

Different laws and customs may be applied to Europeans and Indians, although they are subjected to same Courts 61. In laying down this proposition, however, we must guard against misconception. Though an Englishman be made amenable to the same tribunal with the Native, and though his rights be placed under the same supervision and protection, it does not follow that those rights are to be determined by the same rule. It is not necessary, for example, that the property of an Englishman should descend by the Indian rather than by the English Law of Succession. In cases of marriage the same tribunal may observe one rule in



respect to the Englishman, another in respect to the Mussulman, and a third in respect to the Hindoo. Even in criminal cases, where such distinctions are least desirable, they may yet sometimes be necessary, since it is conceivable that what would operate as a severe penalty to a Hindoo, would be felt as none by an Englishman. But variances like these do not affect the main principle. The maxim still remains that justice is to be distributed to men of every Race, Creed, and Colour, according to its essence, and with as little diversity of circumstances as possible.

62. Secondly, in looking forward to the effect of making Englishmen triable by the Mofussil Courts you will do well to take into your renewed and very serious consideration a question often mooted, and even partially discussed, though as yet undecided. We mean whether or not the use of Juries in Criminal Trials should be introduced into the Provinces. We would not blindly yield to the opinion or the prejudice that it is the inalienable right of an Englishman under a Criminal accusation to be tried by a Jury. The only inalienable right of an accused Englishman is justice; and if he resides in the Interior of India, he must be content with such justice as is dispensed to the Natives. But the prospect of an increased residence of Englishmen in the Interior, considering their known attachment to the principle of this Institution, forms an additional reason for the consideration of the expediency or in expediency of adopting it generally.

Question  
of introduc-  
ing trial  
by Jury

63. Even, however, if it be so adopted, it is neither necessary nor expedient that the Jury Trial which may be established in India should be an exact copy of that which subsists in England. Whatever may be the prejudices of Englishmen, we strongly deprecate the transfer to India of all the peculiarities of our Criminal Judicature. We are not satisfied that these peculiarities are virtues. There is no inherent perfection in the number twelve, nor any mysterious charm in an enforced unanimity of opinion, and legislating for the Indian people, we should be apt to seek for precedents in the ancient usages of India, rather than in the

Criminal  
procedure  
of England  
should not  
be trans-  
ferred  
*in toto*  
to India

Legislation  
for India  
should be  
based on  
ancient  
usages of  
India

modern practice of England. The system of Criminal Judicature which you adopt must be formed with an especial regard to the advantage of the Natives, rather than the New Settlers, not because the latter are in themselves less worthy of consideration, but because they are comparatively few, and Laws and Institutions exist for the benefit not of the few but of the many.

\* \* \* \*

76. We have now completed all that we deem it necessary to say at present regarding the legislation to be exercised, and the laws to be made, in India. We will proceed to consider the new relation in which you will be placed with reference to the subordinate Governments, not by means of your legislative supremacy, but in other respects.

77. The words of the 39th Clause are very comprehensive: 'The superintendence, direction, and control of the whole civil and military Government of all the said territories and revenues in India shall be vested in the said Governor-General in Council'.

Relations  
of the  
Supreme  
Govern-  
ment with  
the sub-  
ordinate  
Govern-  
ments

78. The powers here conveyed, when the words are interpreted in all their latitude, include the whole powers of Government.' And it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole civil and military Government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you.

79. With respect to the exercise of your legislative powers in the several Presidencies, what we have adduced of a general nature on that subject will, for the present, suffice.

80. With respect to the other power which you are called upon to exercise, it will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government and those which belong to the general Government ruling over and superintending the whole.

Line be-  
tween  
local and  
general  
government  
should be  
carefully  
drawn

81. When this line is improperly drawn the conse-

quence is either that the general Government interferes with the province of the Local Government, and enters into details which it cannot manage, and which preclude its consideration of more important objects; or that it withdraws its attention from the evidence of many things which may be right or wrong in the general course of the local administration, and thus partially deprives the State of the benefit of its superintendence and control.

82. It is true that the former Acts of Parliament, which made the Local Government of Bengal a supreme Government, gave the Governor-General in Council a control and superintendence over the other Presidencies as complete and paramount as it was possible for language to convey, and this we must assume to have been the intention of the Legislature. In practice, however, the Supreme Government made little exercise of its superintending authority, and the result has been that even that little exercise of it has been generally made when it was too late to be made with real effect, namely, after the subordinate Government had taken its course; thus losing the character of control and responsibility, and retaining only that of *ex post facto* intervention—a sort of intervention always invidious, and in most cases nothing but invidious, because what was already done, however open to censure, was beyond the reach of recall or correction.

83. It is evidently the object of the present Act to carry into effect that intention of the Legislature to which we have alluded. Invested as you are with all the powers of Government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of Government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of Government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before

Imperfect  
exercise  
of control  
by Supreme  
Government  
over sub-  
ordinate  
Govern-  
ments

Control of  
Supreme  
Government  
over sub-  
ordinate  
Govern-  
ments  
should be  
made  
effective

you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it.

84. In general it is to be recollected that in all cases where there are gradations of authority the right working of the system must very much depend on the wisdom and moderation of the supreme authority and also of the subordinate authorities. This is especially true of a system so peculiar as that of our Indian Empire. It was impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and a petty, vexatious, meddling interference. We rely on the practical good sense of our Governor-General in Council, and of our other Governors, for carrying the law into effect in a manner consonant with its spirit, and we see no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without impairing or neutralising that of the highest.

85. The subordinate Governments will correspond directly with us as formerly, but we think that you should immediately receive copies of all their more important letters to us, both as part of the evidence of their proceedings which you should have before you, and that we may have the benefit of the observations which you may have to make, and which we desire that you will always despatch to us with the smallest possible delay.

86. It will be for you to determine what part of their records, or what other documents, it will be necessary for you regularly to receive as evidence of the general proceedings of the subordinate Governments, and as an index to the other documents, which you will have occasion to call for when anything occurs which you desire to investigate.

87. The Legislature has left the seat of the Supreme Government, both permanent and temporary, to its own choice. The important circumstance, how-

ever, of making the Governor-General local Governor of Bengal, renders it necessary that his habitual residence should be in the place where he can best perform both sets of his duties, that is, in Bengal. We have no doubt, therefore, that you will concur with us in thinking the seat of the Supreme Government should be at Calcutta, where your records are now deposited, and where the requisite Buildings, public and private already exist.

98. It is true the Governor-General may appoint a Deputy as Governor of Bengal. But this arrangement would need to be permanent, if the seat of the Supreme Government were not in Bengal; and in that there would be considerable difficulty. The Governor can appoint as his Deputy, only one of the ordinary members of the Supreme Council. But if one of the four ordinary members of the Supreme Council is taken away, three only remain. By express enactment also it is established, that three ordinary Members shall be present to constitute a Legislative Council. But the inconvenience of being unable to transact business without the presence of every Member of the Council must be obvious, especially in India, where the health of Europeans is so precarious.

Governor  
of Bengal

100. There is one function of Government, with respect to which it may be a question in what hands it should be lodged—we mean the regulation and management of the external relations. With respect to the great questions of peace and war, there is no room for deliberation. It is very obvious they should be determined wholly by the superintending Government which alone has under its eye the whole of the relations of the State. We think indeed that the diplomatic interests of the State will be placed with most advantage entirely in the hands of the Supreme Government; and the patronage connected with that department will of course follow the duties. It does not follow, nor do we mean, that if, from proximity, or any other cause, a particular Residency, or a particular negotiation, can be better superintended by

Control of  
external  
relations  
vested in  
Supreme  
Government

Supreme  
Government  
may delegate  
diplomatic  
business, to  
a Local  
Government

a local, than the general Government, the general Government should not delegate that superintendence.

**Removal of disqualification of Indians for appointment to Company's service** 103. By clause 87 of the Act it is provided that no person by reason of his birth, creed, or colour, shall be disqualified from holding any office in our service.

104. It is fitting that this important enactment should be understood in order that its full spirit and intention may be transfused through our whole system of administration.

**Real interpretation of clause 87** 105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break down or derange the scheme of our Government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the legislature has established for securing the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the college at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be of the number; that no subject of the King, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our unconvenanted servants in India, or from the convenanted service itself, provided he be otherwise eligible consistently with the rules and agreeably to the conditions observed and exacted in the one case and in the other.

**Employment of natives in official situations** 106. In the application of this principle, that which will chiefly fall to your share will be the employment of natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class—we mean natives of the whole blood—it is hardly necessary to say that the purposes of the legislature have in a considerable degree been anticipated; you well know, and indeed have in some important respects

carried into effect, our desire that natives should be admitted to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy; still a line of demarcation, to some extent in favour of the natives, to some extent in exclusion of them, has been maintained; certain offices are appropriated to them, from certain others they are debarred—not because these latter belong to the covenanted service, and the former do not belong to it, but professedly on the ground that the average amount of native qualifications can be presumed only to rise to a certain limit. It is this line of demarcation which the present enactment obliterates, or rather for which it substitutes another, wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.

Criterion of fitness

107. To this altered rule it will be necessary that you should, both in your acts and your language, conform; practically, perhaps, no very marked difference of results will be occasioned. The distinction between situations allotted to the covenanted service and all other situations of an official or public nature will remain generally as at present<sup>1</sup>.

Considerable Indianization of services not expected

108. Into a more particular consideration of the effects that may result from the great principle which the legislature has now for the first time recognised and established we do not enter, because we would avoid disquisition of a speculative nature. But there is one practical lesson which, often as we have on former occasions inculcated it on you, the present subject suggests to us once more to enforce. While, on the one hand, it may be anticipated that the range of public situations accessible to the natives and mixed races will gradually be enlarged, it is, on the other hand, to be recollected that, as settlers from Europe

<sup>1</sup> See Anderson and Subedar, *Development of an Indian Policy*, pp. 71-76.

Europeans  
 find their way  
 into the country,  
 this class of persons  
 will probably furnish  
 candidates for those very  
 situations to which  
 the natives and mixed  
 race will have  
 admittance. Men of  
 European enterprise  
 and education will  
 appear in the field;  
 and it is by the  
 prospect of this event  
 that we are led  
 particularly to impress  
 the lesson already  
 alluded to on your  
 attention. In every  
 view it is important  
 that the indigenous  
 people of India, or  
 those among them  
 who by their habits,  
 character, or position  
 may be induced to  
 aspire to office,  
 should, as far as  
 possible, be qualified  
 to meet their  
 European competitors.

Indians  
 to be made  
 fit to meet  
 European  
 competition
 

 Thence, then, arises a powerful argument for the promotion of every design tending to the improvement of the natives whether by conferring on them the advantages of education, or by diffusing among them the treasures of science, knowledge, and moral culture. For these desirable results, we are well aware that you, like ourselves, are anxious, and we doubt not that, in order to impel you to increased exertion for the promotion of them, you will need no stimulant beyond a simple reference to the considerations we have here suggested.

Aim of  
 Government
 

 109. While, however, we entertain these wishes and opinions, we must guard against the supposition that it is chiefly by holding out means and opportunities of official distinction that we expect our Government to benefit the millions subjected to their authority. We have repeatedly expressed to you a very different sentiment. Facilities of official advancement can little affect the bulk of the people under any Government, and perhaps least under a good Government. It is not by holding out incentives to official ambition, but by repressing crime, by securing and guarding property, by creating confidence, by ensuring to industry the fruit of its labour, by protecting men in the undisturbed enjoyment of their rights, and in the unfettered exercise of their faculties, that Governments best minister to the public wealth and happiness. In effect, the free access to office is chiefly valuable when it is a part of general freedom.



**41. ACT ESTABLISHING THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, 1833.  
(3 & 4 William IV, C. 41, August 14, 1833).**

And whereas, from the decisions of various courts of judicature in the East Indies, and in the plantations, colonies and other Dominions of His Majesty abroad, an appeal lies to His Majesty in Council : and whereas matters of Appeal or Petition to His Majesty in Council have usually been heard before a Committee of the whole of His Majesty's Privy Council who have made a Report to His Majesty in Council, whereupon it is expedient to make certain Provisions for the more effectual hearing and reporting on Appeals to His Majesty in Council and on other matters, and to give such powers and jurisdiction to His Majesty in Council as hereinafter mentioned :—

Preamble

Be it enacted that the President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons, Members of His Majesty's Privy Council, who shall have been President thereof or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices here-in-before mentioned, shall form a Committee of His Majesty's said Privy Council and shall be styled "The Judicial Committee of the Privy Council": Provided nevertheless, that it shall be lawful for His Majesty from time to time, as and when he shall think fit, by his Sign Manual, to appoint any two other

Composition  
of the  
Judicial  
Committee

persons, being Privy Councillors, to be members of the said Committee.

\* \* \* \*

**Jurisdiction** 3. And be it further enacted, that all Appeals or complaints in the nature of Appeals whatever, which, either by virtue of this Act, or of any Law, Statute, or Custom, may be brought before His Majesty or His Majesty in Council from or in respect of the Determination, Sentence, Rule, or Order of any Court, Judge, or Judicial Officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by His Majesty to the said Judicial Committee of his Privy Council, and that such Appeals, Causes, and Matters shall be heard by the said Judicial Committee, and a Report or Recommendation thereon shall be made to His Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the Custom with respect to matters referred by His Majesty to the whole of His Privy Council or a Committee thereof (the nature of such Report or Recommendation being always stated in the open Court).

**Procedure**

\* \* \* \*

**Decrees for courts abroad to be given effect as the King-in-Council shall direct** 21. And be it further enacted, that the order or Decree of His Majesty in Council or any Appeal from the order, sentence, or Decree of any Court of Justice in the East Indies, or of any Colony, Plantation, or other His Majesty's Dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as His Majesty in Council shall, on the recommendation of the said Judicial Committee, direct; and it shall be lawful for His Majesty in Council, on such recommendation, by order, to direct that such Court of Justice shall carry the same into effect accordingly, and thereupon such Court of Justice shall have the same powers of carrying into effect and enforcing such order or Decree as are possessed by or are hereby given to His Majesty in Council: Provided always that nothing in this Act contained shall impeach or abridge the

powers, jurisdiction, or authority of His Majesty's Privy Council as heretofore exercised by such Council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this Act, and for the purpose aforesaid.

22. And whereas various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of Calcutta, Madras, and Bombay in the East Indies have been admitted by the said Courts, through the United Company of Merchants in England trading to the East Indies, to the office of His Majesty's said Privy Council, but the suitors in the causes so appealed have not taken the necessary measures to bring on the same to Hearing ; be it therefore further enacted by the Authority aforesaid that it shall be lawful for His Majesty in Council to give such directions to the said United Company and other persons for the purpose of bringing to a hearing before the said committee the several cases appealed or hereafter to be appealed to His Majesty in Council from the several courts of Sudder Dewanny Adawlut in the East Indies and for appointing Agents and Counsel for the different parties in such appeals, and to make such orders for security and payment of the costs thereupon, as His said Majesty in Council shall think fit ; and thereupon such appeals shall be heard and reported on to His Majesty in Council, and shall be by His Majesty in Council determined in the same manner, and the Judgments, orders and decrees of His Majesty in Council thereon shall be of the same manner, and the Judgments, orders and decrees of His Majesty in Council thereon shall be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding : Provided always, that such last mentioned Powers shall not extend to any Appeals from the said Courts of Sudder Dewanny Adawlut other than Appeals in which no Proceedings have been or shall hereafter be taken in England, on either side for a period of two years subsequent to the admission

Appeals  
from Sadr  
Dewani  
Adalats of  
Bombay,  
Madras,  
and  
Calcutta

How these  
appeals  
are to be  
disposed of

of the Appeal by such Court of Sudder Dewanny Adawlut.

\* \* \* \*

24. And be it further enacted, that it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for regulating the mode, form, and time of Appeal to be made from the Decisions of the said Courts of Sudder Dewanny Adawlut, or any other Courts of Judicature in India or elsewhere to the Eastward of the Cape of Good Hope (from the decisions of which an Appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for preventing Delays in the making or hearing such Appeals, and as to the Expenses attending the said Appeals, and as to the Amount or Value of the Property in respect of which any such Appeal may be made.

King  
empowered  
to make  
rules and  
orders  
regarding  
appeals  
to Privy  
Council

#### 45. LORD ELLENBOROUGH ON GOVERNOR-GENERAL'S COUNCIL.

##### 1. Letter to Lord Auckland, September 19, 1841.

It appeared to me when I was at this office before,<sup>1</sup> that you were in want of some officer in India whose duties should be similar to those of the Chancellor of the Exchequer here. My idea was and is, that the general superintendence of the finances would be better entrusted to a person not educated in the Company's service, but formed to habits of business here, and it has occurred to me that the Member of Council now only authorised to attend the meetings of Council when legislative measures are before it, might be permitted to attend when matters of revenue and finance are before it, and might be made your Financial Minister.

Governor-  
General  
should have  
a Financial  
Minister

Law  
Member  
may act as  
Financial  
Minister

\* \* \* \*

<sup>1</sup> Lord Ellenborough held the Presidency of the Board of Control on four occasions: September, 1832—November, 1830 (Wellington's Cabinet); December, 1834—April, 1835 (Peel's Cabinet); September-October, 1841 (Peel's Cabinet); February-May, 1838 (Derby's Cabinet).

One of my former plans was to make the several Members of Council in practice, as they once, I believe, used to be, heads of departments—in fact the Governor-General's Secretaries of State. I should be glad to know your views upon this point. My idea is that all business is ill-transacted by Boards, and that the secret of efficient administration is in individual responsibility. The Members of Council made Heads of Departments would still be the Governor-General's Cabinet.

Members of Council should be made heads of departments

## II. Minute, February 18, 1844.

The Court of Directors in their letter dated the 29th of November, 1843, have intimated their desire that the presence of the fourth member of Council may not be restricted to meetings held for the purpose of passing Laws and Regulations, but have at the same time cautioned us to bear in mind that at such meetings only is he entitled to a voice in our proceedings.

Instructions of Court of Directors regarding Law Member

It is impossible to regard this otherwise than as a mere expression of the opinion and wish of the Court. If the words used could be regarded as conveying a "direction," by virtue of such direction the 4th Member of Council would become *entitled* to sit at meetings not held for the purpose of passing Laws and Regulations; but the last Charter Act expressly provides that the 4th Member of Council shall not be *entitled* to sit or vote in the Council except at meetings thereof for making Laws and Regulations; therefore any such "direction" given by the Court would be altogether invalid because inconsistent with the Act of Parliament, from which alone the Court derive their authority. The Council of India as established by Act of Parliament is as much a part of the Constitution of India as the Court of Directors and it is the duty of the Council to guard with jealousy all its rights, to resist all infringements of its powers and above all to treat as utterly null every direction which if obeyed would change its composition. Considering however that the Court can only have intended to convey an intimation of their opinion and of their wish, and not to send a

Interpretation of Court's instructions

How to  
give effect  
to Court's  
instructions

direction which they are not by law competent to give, we may properly show our respect for the opinion of the Court by carrying into effect their wish that the 4th Member of Council should sit at meetings of the Council not held for the purpose of making laws and regulations in as far as it may appear that his presence may not be injurious to the public service ; but it may at all times be borne in mind that above all things secrecy in Council and promptitude in action are essential to the successful conduct of public affairs in India ; and it must also be understood that any individual member of the Council may, at any time if he shall see fit, require that any person shall withdraw from the Council who is not entitled to sit therein by the Acts of Parliament.

#### 46. LORD ELLENBOROUGH ON THE COURT OF DIRECTORS, 1844.

(Letter to the Secret Committee, January 18, 1844).

2. Your Honorable Committee must be too well acquainted with the Act of Parliament which regulates the Government of India not to be aware that it is my duty to pay regard only to the orders of the Court sanctioned by Her Majesty's Commissioners for the Affairs of India. Of the opinion entertained by the Court—nothing Court itself, I can constitutionally have no knowledge. more than I only know the Court as the channel through which a channel it has pleased Parliament to provide that the orders of of communi cation the supreme authority in England shall be conveyed between to India ; but that supreme authority does not reside Governor-General in the Court itself. It resides altogether in Her Majesty's and Commissioners for the Affairs of India who are Board empowered to alter as they may think fit every order of Control the Court may desire to transmit, and to direct the transmission of orders of which the Court may unanimously disapprove.<sup>1</sup>

<sup>1</sup> Sir Robert Peel, Prime Minister of England, wrote in a private letter on February 20, 1842, "The Court (of Directors) is becoming a very troublesome body, mainly from the want of efficient control. They presume upon the absence of it, and encroach accordingly."

3. It is true that while Parliament has provided that all the measures of the Indian Government shall be thus practically under the sole control of Her Majesty's Commissioners, it has left to the Court the independent power of evincing its real disapproval of the measures to which, under the control of the Commissioners, it may have signified its sanction, by removing from his office the Governor-General with whom those measures may have originated.

Court's  
power of  
recalling  
Governor-  
General

4. It is not for me to question the wisdom of this provision, but it is evident that it may be so exercised as to effect the removal from office in the midst of great public difficulties, of the person by whom it may be the opinion of the supreme authority in England, that those difficulties can be most successfully encountered.<sup>1</sup>

#### 47. THE CHARTER ACT OF 1853.

(16 & 17 Vict., C. 95).

(An Act to Provide for the Government of India, August 20, 1853).

15. The provisions of the said Act of the Third and Fourth Years of King William the Fourth, relating to the Division of the Presidency of Fort William in Bengal into Two Presidencies, and to the Measures consequent thereupon, which have been suspended under the Authority of the Act of the Session holden in the Fifth and Sixth Years of King William the Fourth, Chapter Fifty-two, shall remain suspended until the Court of Directors, under the Direction and Control of the Board of Commissioners for the Affairs of India, shall otherwise direct; and during the Continuance of such Suspension the Provisions of such last mentioned Act, authorizing the Appointment of a Lieutenant-Governor for the North-Western Provinces, then under the Government of the Presidency of Fort William in Bengal, and the Appoint-

Suspension  
of the pro-  
vision for  
creating  
Presidency  
of Agra

<sup>1</sup> Lord Ellenborough himself was recalled by the Court of Directors without the approval of the Board of Control.

ments and Arrangements made thereunder, shall remain in full force.

16. It shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to declare that the Governor-General of India shall not be Governor of the Presidency of Fort William in Bengal, but that a separate Governor shall be appointed for such Presidency, and in such Case a separate Governor shall be from Time to Time appointed for such Presidency accordingly, in manner provided by the said Act of the Third and Fourth Years of King William the Fourth, in the Case of Vacancies happening in the Offices of the Governors of the Presidencies of Fort Saint George and Bombay; and from and after the Appointment of such Governor, the Power by the said Act vested in the Governor-General of India of appointing a Deputy Governor of the said Presidency of Fort William in Bengal shall cease; and unless and until a separate Governor of such Presidency shall be constituted as aforesaid, it shall be lawful for the Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to authorize and direct the Governor-General of India in Council to appoint from Time to Time any servant of the said Company who shall have been Ten years in their Service in India to the Office of Lieutenant Governor of such Part of the Territories under the Presidency of Fort William in Bengal as for the Time being may not be under the Lieutenant Governor of the said North-western Provinces, and to declare and limit the Extent of the Authority of the Lieutenant Governor to be so appointed.

17. It shall be lawful for the Court of Directors of the said Company, under such Direction and Control, if and when they think fit, to constitute One new Presidency within the Territories subject for the Time being to the Government of the said Company, and to declare and appoint what part of such Territories shall be subject to the Government of such new Presi-



gency ; and unless and until such new Presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, to authorize (in addition to such Appointments as are herein-before authorized to be continued and made for the Territories now and heretofore under the said Presidency of Fort William) the appointment by the said Governor-General in Council of a Lieutenant-Governor for any Part of the Territories for the Time being subject to the Government of the said Company, and to declare for what part of the said Territories such Lieutenant-Governor shall be appointed, and the Extent of his Authority, and from Time to Time to revoke or alter any such Declaration.

Provision  
for the  
creation of  
a new  
Lieutenant-  
Governor-  
ship

18. It shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, from Time to Time to declare and appoint what Part or Parts of the Territories for the Time being subject to the Government of the said Company shall be or continue subject to each of the Presidencies and Lieutenant-Governorships for the Time being subsisting in such Territories, and to make such Distribution and Arrangement or new Distribution and Arrangement of such Territories into or among such Presidencies or Lieutenant-Governorships as to the said Court of Directors, under such Direction and Control as aforesaid, may seem expedient.

Court of  
Directors  
empowered  
to define  
and alter  
limits of  
Presidencies  
and  
Lieutenant-  
Governor-  
ships

19. The Provisions of the said Act of the Third and Fourth Years of King William the Fourth, as amended by this Act, and all other Provisions now in force for the Administration of the Executive Government of the Presidencies of Fort Saint George and Bombay respectively, and authorizing the Revocation and Suspension of the Appointment of Councils and the Reduction of the Number of Councillors in such Presidencies respectively, and as to the Powers, Duties, Functions, and Immunities of the Governors of such Presidencies respectively, and of such Governors in their respective Councils, and concerning or applicable to the Appointment and provisional Appointment of

All laws  
applicable  
to existing  
Presidencies  
will be  
applicable  
to newly  
created  
Presidencies

Governors and Members of Council of the said Presidencies respectively on Vacancies, and otherwise providing for Vacancies in the office of any such Governor, and concerning the Removal and Dismissal of such Governors and Members of Council, and the Revocation of Appointments and provisional Appointments of Governors and Members of Council of such Presidencies, and concerning the Salaries and Emoluments of such Governors and Members of Council, shall extend and be applicable in like Manner to and in the Case of any new Presidency to be established as aforesaid under this Act, and also to and in the Case of the Presidency of Agra, in case the same be constituted under the Provisions of the said Act of the Third and Fourth Years of King William the Fourth: and the said Provisions concerning Appointments of Governors and Members of Council on Vacancies, as amended by this Act, shall extend and be applicable to and for the first Appointment of a Governor and Members of Council of such new Presidency and the Presidency of Agra aforesaid.

20. Every Appointment by the Court of Directors of any ordinary Member of the Council of India, or of any Member of the Council of any Presidency in India, shall be subject to the Approbation of Her Majesty, to be signified under her Royal Sign Manual counter-signed by the President of the Board of Commissioners for the Affairs of India.

21. So much of the said Act of the Third and Fourth Years of King William the Fourth as provides that the Fourth Ordinary Member of the Council of India shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations, shall be repealed.

22. For the better Exercise of the Powers of making Laws and Regulations, now vested in the Governor-General of India in Council, the several Persons herein-after mentioned shall in addition to and together with such Governor-General and the Members of the said Council, under the said Act of the Third and Fourth Years of King William the Fourth, be

Appoint-  
ment of  
Councillors  
subject to  
Queen's  
approval

Removal of  
disability  
of Fourth  
Ordinary  
Member  
of Council

Extension  
of Council  
for better  
law-  
making

Members of the said Council of India for and in relation to the Exercise of all such Powers of making Laws and Regulations as aforesaid, and shall be distinguished as Legislative Councillors thereof ; (that is to say),

'Legislative Councillors'

One member for each Presidency and Lieutenant-Governorship for the Time being established in the said Territories, to be appointed from Time to Time by the Governor of such Presidency and the Lieutenant-Governor of such Lieutenant-Governorship respectively, from among the Persons having been or being at the Time of their Appointment in the Civil Service of such Company within such Presidency or Lieutenant-Governorship, and who shall have been Ten Years in the Service of the said Company :

Composition of Legislative Council

The Chief Justice of the Supreme Court of Judicature at Fort William in Bengal, or the Chief Justice or Chief Judge of any Court of Judicature hereafter to be constituted in the said Territories to or in which the Powers of such Supreme Court may be transferred or vested :

One of the other Judges of such Supreme Court, or One of the Judges appointed by Her Majesty of any such future Court as aforesaid, to be named by the said Governor General.

And it shall be lawful for the Court of Directors, if they think it expedient, under the Direction and Control of the Board of Commissioners for the Affairs of India, to authorize and direct the Governor-General of India to appoint from time to time, in addition to such Legislative Councillors as aforesaid, Two Persons, to be selected by the said Governor-General, having been Ten Years in Service of the Company, to be Legislative Councillors of the said Council under this Act : Provided always, that the Legislative Councillors added to the Council of India by or under this Act shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations.

Disability of the 'Legislative Councillors'

23. It shall be lawful for such Governor-General to appoint any Member of the said Council to be Vice-

**President and Vice-President of Council for law-making** President thereof at Meetings of the said Council for making Laws and Regulations who shall preside therein at such Meetings in the Absence of such Governor-General, and in the Absence of such Vice-President the senior ordinary Member of the Council

**Quorum for law-making**

of India there present shall preside therein; and the Powers of making Laws or Regulations vested in the said Governor-General in Council shall be exercised only at meetings of the said Council, at which such Governor-General or Vice-President or some Ordinary Member of Council, and Six or more Members of the said Council, shall be assembled, the Chief Justice, or Chief Judge, or such other Judge of the Supreme Court or such other Court as aforesaid, or the Fourth Ordinary Member of the said Council of India, being One; and in every Case of Difference of Opinion at Meetings of the said Council for making Laws and Regulations, where there shall be an Equality of Voices, the Governor-General, or in his Absence the Vice-President, and in the absence of the Governor-General and the Vice-President such senior ordinary Member of Council there present and presiding, shall have Two Votes or the Casting Vote.

**Casting vote**

**Governor-General's assent required for validity of laws** 24. Provided always, that no Law or Regulation made by the said Council shall have Force or be promulgated until the same has been assented to by the said Governor-General, whether he shall or shall not have been present in Council at the making thereof.

\* \* \* \*

**Laws affecting Prerogative of the Crown** 26. No Law or Regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any Prerogative of the Crown, provided such Law or Regulation shall have received the previous Sanction of the Crown, signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the Affairs of India.

\* \* \* \*

33. And whereas by the said Act of the Third and Fourth Years of King William the Fourth it is enacted

that the President of the Board of Commissioners for the Affairs of India, but no other Commissioner, as such, and the Secretaries and other Officers, shall be paid by the said Company such fixed salaries as His Majesty shall, by any Warrant or Warrants under his Sign Manual, countersigned by the Chancellor of the Exchequer for the Time being, direct : Be it enacted, that such fixed Salary of the said President of the Board of Commissioners shall in no Case be less than the Salary which shall be paid to One of Her Majesty's Principal Secretaries of State ; and that only one of the said Secretaries to the said Board shall be capable of being elected or sitting and voting in Parliament.

Salary of President of Board of Control

Only one Secretary to Board of Control eligible to Parliament

\* \* \* \*

35 There shall be paid to the several Officers hereinafter named the several annual Salaries set against the Names of such Officers respectively, subject to such Reduction as the Court of Directors, with the Sanction of the said Board, may from Time to Time think fit ; (that is to say),

Salaries of Officials in India

To the Commander-in-Chief of the Forces in India, One hundred thousand Company's Rupees, in lieu of all other pay and allowances :

To each Lieutenant Governor, One hundred thousand Company's Rupees :

To each ordinary Member of the Council of India, Eighty thousand Company's Rupees :

To each Legislative Councillor of the Council of India (not holding any other Office), Fifty thousand Company's Rupees :

The several Salaries aforesaid to be subject to the Provisions and Regulations of the said Act of the Third and Fourth Years of King William the Fourth, concerning the Salaries thereby appointed : Provided always, that the Salary of any such Officer appointed before the passing of this Act shall not under this Enactment be reduced :

#### 48. SIR CHARLES WOOD'S SPEECH ON THE CHARTER ACT OF 1853.<sup>1</sup>

(House of Commons, June 3, 1853).

Relative positions of Governor-General and Council unchanged ... I need not trouble the House with any lengthened remarks upon the subject of the position of the Governor-General, because, according to the concurrent testimony of all the witnesses, there is not much change required. Lord Dalhousie is of opinion that no change is necessary<sup>2</sup>. The questions that have arisen on more than one occasion as to the relative powers of the Governor-General and his Council have been settled by the opinions of the law officers here, and the orders which have been sent from the Court of Directors ; and it seems quite unnecessary to make any change in this respect. The only alteration in the position of the Governor-General which we propose to make is this. It appears from the whole of the evidence, that, entrusted as he is both with the Government of India and the Government of Bengal, he has more duties to attend to than he can fairly discharge. We propose, therefore, to relieve him of the administration of the province of Bengal.<sup>3</sup> But we do not propose that any change should be made in the general control which he exercises over the whole of the Indian Government. Complaints have been made by some witnesses on behalf of the Presidencies, of the unnecessary check on useful expenditure which they say is imposed upon

<sup>1</sup> See Lee-Warner, *The Life of the Marquis of Dalhousie*, Vol. II, Chap. VII.

<sup>2</sup> Lord Dalhousie wrote in a private letter on July 10, 1852, "... I believe, if they examine deliberately, they will find little to alter of moment. The Government of Bengal, however, is an exception to this observation, and I earnestly hope they will effect a change there. I have constantly urged it for several years." When a Lieutenant-Governor took charge of Bengal (April 29, 1854) Lord Dalhousie wrote, "... I am conscious the transfer will be a great relief to me. It will be a great benefit, too, to the province, although on reviewing the two years during which I have administered it, I find no reason to be ashamed of myself."

<sup>3</sup> The Government of India Act, 1854 (17 and 18 Vict., c. 77) provided (clause 5) that the Governor-General "shall no longer be the Governor of ... Bengal."

them by the Governor-General. But this does not appear to be borne out by the facts...Perhaps the existing limit on the expenditure to be incurred by the Governors of the minor Presidencies might be somewhat extended; but it should not be forgotten that the wasteful expenditure incurred by these Presidencies before the Act of 1833, was one of the main reasons stated by Lord Glenelg<sup>1</sup> for the change in the Government of India, rendering absolutely necessary the control on the part of the Supreme Government.

Control of Governor-General over expenditure of Local Governments

Another point has been raised as to the absence of the Governor-General from Calcutta without his Council. That, again, I think, is a matter for discretion, and not for legislation. There are cases where it is desirable that the Governor-General should leave Calcutta. When Lord Hardinge, for example, went up with the army, it was clearly for the benefit of India that he should do so; and when Lord Dalhousie went up to the Punjab,<sup>2</sup> it was also clearly for the interest of India that he should be there and not at Calcutta...When the Governor-General goes away from Calcutta on such occasions, he generally takes with him, as it is called, the political and military powers, which enable him to direct the political movements in India; but he leaves with his Council at Calcutta all the powers necessary for conducting the general administration of India. This portion of the duty of the Supreme Government they are perfectly competent to perform, and the inconvenience and interruption to business is avoided, which would inevitably result from moving the Council and all its attendant functionaries from the permanent seat of Government at Calcutta...no fixed regulations can be laid down which might

Governor-General's separation from Council

Division of powers between Governor-General and Council

<sup>1</sup> Charles Grant, President of the Board of Control.

<sup>2</sup> Lord Dalhousie wrote in a private letter on April 1, 1850. "I daily awake more and more to the consciousness that the place of the G.-G. is here with the Council, if any measures of internal improvement are to be prosecuted. Political considerations must carry me to the north just now, but I see all the disadvantages of it to the other provinces, and I doubt I could not satisfy my conscience if I did not return here before the hot weather of 1851."

and subject both the Governor-General and the Empire to considerable inconvenience.

Law  
Member

With regard to the Executive Council, we propose no change<sup>1</sup> except that the members shall be named by the Court of Directors, with the check of the approbation of the Crown; and that the fourth Ordinary Member, or the "legislative councillor", as he is called, shall sit and vote upon all subjects brought under the consideration of the Council.

Lieutenant-  
Governor  
of Bengal

The evidence is uniformly in favour of the establishment of a permanent Lieutenant-Governor in Bengal. The interests of the Presidency are stated in many cases to have suffered from the want of a permanent officer superintending the various matters connected with its administration; and as it is desirable to relieve the Governor-General of the labour of this duty, and will clearly be to the advantage of the district, we propose that power should be taken to appoint a Lieutenant-Governor of Bengal. The evidence is, I think, in favour of maintaining the other Presidencies as they are at present. I think there is considerable advantage in sending out to these Governments statesmen from England. The position of the Governors there is very different from that of the Lieutenant-Governor in the Upper Provinces. There is a large European population both at Bombay and Madras, a separate civil service, distinct armies, separate

Madras  
and  
Bombay

<sup>1</sup> Lord Dalhousie was satisfied with his Council. He wrote in a private letter on April 16, 1859, "They are most willing to aid, and show every symptom of personal good will that I could wish." There were some differences between Lord Dalhousie and the Council regarding the annexation of Oudh, but a unanimous conclusion followed personal discussion. We read in one of his private letters, dated January 13, 1856, "All four members of Council in their minutes recorded different views. All have come to a unanimous conclusion now. By giving in a little myself they have given in too, and we have arrived at an agreement in which we are all equal and one. This is the effect of doing the work by personal discussion in Council. Had we proceeded by way of minutes, I doubt whether we should ever have come to a unanimous decision, at all; while any decision would probably have cost us eight weeks instead of eight days."



courts of judicature, and it is essential, I think, that the Governors in these places should be in a somewhat higher position than that of Lieutenant-Governor, and therefore we propose to leave these Presidencies with their Governors and their Councils as they stand, the appointment of Governor being open, as now, either to Indian servants or to statesmen from this country. Lord W. Bentinck, one of the best of our Governors-General, had the advantage of having been at an early period Governor of Madras<sup>1</sup>. We propose to continue the present power of having a Governor, or a Lieutenant-Governor, in the North-Western Provinces and we propose also to take power of creating, if it should hereafter be found desirable, a new Presidency or Lieutenant-Governorship in India ;<sup>2</sup> and power also to regulate and alter from time to time the boundaries and limits of the respective Presidences or Lieutenant-Governorships. In taking this power, I am looking, of course, to the large districts of the Panjab and the provinces of the Indus, which have been added to our territories since 1833 ; but I wish to leave it open to the Government to make any arrangement of the Provinces which may, after full consideration, be found most convenient for their administration the evidence, as far as it has been taken, is that it would not be desirable to place natives in the Council.

N.-W. P.

Provision  
for a new  
Presidency  
or Lieute-  
nant Gover-  
norship

Punjab and  
Sind

Indians  
not to be  
admitted  
to Council

<sup>1</sup> For the historical connection between Madras and the post of Governor-General, see Lord Curzon, *British Government in India*, Vol. II, pp. 78-82, 84, 88.

<sup>2</sup> The Government of India Act, 1854 (17 and 18 Vict., c. 77) provided (clause 3) that the Governor-General in Council might, with the sanction of the Court of Directors and the Board of Control, "take under the immediate authority and management of the said Governor-General of India in Council any part or parts of the Territories for the time being in the possession or under the government of the said Company, and thereupon give all necessary orders and directions respecting the administration of such part or parts of the said Territories, or otherwise to provide for the administration thereof." This provision led to the appointment of Chief Commissioners, to whom the Governor-General in Council delegated such powers as they thought fit.

Chief Com-  
missioners

**Legislation** I come, now to matters of legislation and legal reforms. With respect to the Law Commission appointed in 1833, I have stated that no practical result followed from their labours, and that there are great defects in the law of India as it now stands. We think it very desirable that the mass of Reports and partly framed Acts which remain of the labours of that commission should be put into a shape to be practically useful. The legislation of India must take place in India, and for that purpose we propose to improve and to enlarge the Legislative Council.

**Legislative Council**

It was stated by Lord Ellenborough, in his evidence, that great inconvenience frequently arose in consequence of there being no member of the Legislative Council at Calcutta who knew any thing of the manners and customs of other parts of India. This inconvenience will be removed by the selection of members from the other Presidencies; and although it is not proposed that these members shall have seats in the Executive Council, there will be this further advantage, that they will supply information to the Governor-General and his Council in their executive capacity as to all matters connected with those parts of the country from which they come. The members of the civil service will bring with them that intimate acquaintance with the manners and customs of the people of India which is so requisite towards promoting sound legislation. There will also be the advantage of having in the Council three persons of legal education from England, two of the judges of the Supreme or other Superior Court, and the Legislative Councillor. I hope that the result of this will be to introduce that improved spirit of legislation with which it is probable all those going from this country to India will be thoroughly imbued; and with this admixture of English legal knowledge and skill, and of the intimate acquaintance possessed by the Indian civil servants of the customs and manners and wants of the different parts of India, we trust that a legislative body will be constructed fully equal to the discharge of its high and important duties. We propose to give the Governor-

**Members from other Presidencies in Legislative Council**

**Judges in Legislative Council**

General a veto on their legislation, which he possesses indeed now when absent from his Council, but not when present.

Governor-General's veto on legislation

#### 49. LORD DALHOUSIE ON THE HEAVY WORK OF THE GOVERNOR-GENERAL.<sup>1</sup>

##### I. Private Letter to Sir George Couper, October 2, 1852.

In the recognition which you have heard made of my being *de jure* G.-G., you will see the result of my insisting on my having submitted to me, and on doing, my own business myself when I first arrived : and you will undersand the criticism which represented me as doing every body's work. That criticism, if it had been correct, would have been a damnatory one. . . I have not been doing other people's work ; I only would not leave them, or permit them to do the work that is mine. So far am I from having more work sent to me than is necessary, I have greatly curtailed it, though even thus it is too much for any man. I reckon that (besides an enormous mass of formal detail which does not come up) not less than 20,000 to 25,000 papers are submitted for the orders of the G.-G. in the course of each year. Yet by systematising ; by causing an analysis or *precis* of each paper to be made by the officers ; by making *them* dispose of each paper on its progress, not troubling me with it *till it is ripe for my orders* (unless my orders should be indispensable during its progress); and by causing all unimportant papers to be submitted, not in bulk but on a register, on which my orders are inserted in a column left for the purpose. —by all these rules, I say, which are directed to make

Procedure followed by Dalhousie

<sup>1</sup> It is interesting to compare Lord Curzon's experience with that of Lord Dalhousie. He worked "from 10 a.m., with the exception of an hour or two for meals, or a public function or a private drive, until 2 a.m. on the following morning or sometimes later." The Secretary of State wrote to him on March 28, 1899, "I hear....you were working eleven hours a day....spare yourself as much as you possibly can, and recollect that in doing so you are really acting in the true interests of good and efficient government in India." See Ronaldshay, *The Life of Lord Curzon*, Vol. II, pp. 24, 24.

the secretaries lighten my labour, while they do not command my judgment or exercise my functions, I do make every man do his own duty ; and the aggregate work, thus condensed, does not fill more than eight despatch-boxes each week. Even thus, I repeat, the labour is incessant, and my performance of it unsatisfactory to myself.

## II. Private Letter to Sir George Couper, May 28, 1854.

**Working hours** I drive for an hour at day-dawn, and ride for another hour or so after sunset—work from 6 to 8½ A.M., and from 10 A.M. to 6 P.M.—sleep, or rather toss about, from 10½ P.M. to 4½ A.M., That's my life ; and if there is any one whom you wish especially ill to, you cannot serve him out better than by wishing him the miserable dog's life I lead. I could not sustain it for another year.

## 50. LORD DALHOUSIE ON THE RELATIONS BETWEEN THE 'HOME' GOVERNMENT AND THE GOVERNMENT OF INDIA.

### I. Private Letter to Sir George Couper, December 8, 1851.

**Nature of despatches sent by Court of Directors** The fact is, these despatches (from the 'Home' Government to the Government of India) are penned for the most part by head clerks, and signed by many without being read, and by all *as members of a body*. The penmen—d—d fellows who do the mechanical work, which others sign—fancy themselves the hidden springs by which this Empire is in reality moved, and they write in a tone which no Secretary of State would address to the Lt.-Governor of the bulls and bisons in the Falkland Islands. The directors, who have not an atom of real power, cling to its shadow, and don't dislike the arrogant tone of fault-finding when they read it ; and . . . they sign one after another as a body what any one singly would not write to his neighbour but his nose should incontinently be pulled therefor . .

<sup>1</sup> See Lord Curzon, *British Government in India*, Vol. II, pp. 210—211.

## II. Private Letter to Sir George Couper, September 23, 1854.

I can't say I like Sir C. Wood as well as they did at the India House, or as I did at first. He is fidgety and meddlesome. Under him it is not the Board of Control it was meant to be, but a Board of Interference, which it was not meant to be. He is very much disposed to treat the Government of India as no Governor-General will submit to be treated. He is complimentary and all that, but it does not reconcile me.

Sir Charles Wood as President of Board of Control.

## III. Private Letter to Sir George Couper, March 12, 1856.

I have left India without receiving one word of thanks or civility from the Court of Directors or from H. M. Government. For two mails before I ceased to be G.-G. the Chairman did not write to me at all. For one mail I received no letter from the President of the Board of Control. After I ceased to be G.-G. I had letters from each, but not a civil word from either. They have never answered my application for a few honours for those who have served under me. Altogether, I feel that I have been treated most ungraciously and discourteously, after such services as mine, and I feel and resent it deeply. One person has treated me with honour and consideration, now as ever—the Sovereign I serve. That, too, I fell deeply<sup>1</sup>!

Dalhousie 'treated most ungraciously'

## 51. LORD DALHOUSIE ON THE LEGISLATIVE COUNCIL.

### I. Diary, October 12, 1854.

By the beginning of June<sup>2</sup> the Council was in operation, and since that time has gone on steadily

<sup>1</sup> Regarding Lord Dalhousie's letters to Sir George Couper Lord Curzon remarks, "...they represent the eager and often contradictory outpourings of an impatient spirit, finding in the confidential intercourse with a lifelong friend the outlet for sentiments and emotions—even for prejudices and passions—which he dared confess to no one else, and which he never intended for publication, either early or later." (*British Government in India*, Vol. II, p. 204).

<sup>2</sup> June, 1854.

working, and setting itself into regular routine. By the Act it is my duty to take the chair whensoever I may be present. Hence I am obliged to act both as President of the Council, and as Chairman of it when in Committee. The Legislative Council transacts the business before it on much the same system as is observed in our own Parliament, but more approaching to the manner of the House of Lords than of the Commons. The number of the stages of each Bill and the opportunities of debate are accordingly diminished.

**Procedure** A Bill is read, after notice given, a first time without debate. After notice given it is read a second time, debate being taken on the principle of the measure.

**First and Second Reading** It is then referred to a committee of three, who, after publishing and giving the public three months to comment upon it, give in their reports suggesting such amendments as they think necessary. The Council then resolves itself into a Committee of the whole Council upon the Bill. Finally, after notice given, the Bill is read a third time and passed. The questions are

**Committee stage** put and the sense of the Council taken in the same manner as in Parliament. If there be a division the clerk calls over the names, beginning with the junior, in order that the Governor-General may not, by voting first in order, exercise an undue influence upon the minds of the members. In the material form of our

**Third Reading** meetings we have adopted a good deal of the American plan. The Legislative Council meets in the Council Chamber. The members are seated in a semicircle, each having a desk before him for his books and papers.

**Voting** The table for the clerks is placed at the upper end of the semicircle, and the President's chair beyond it. At first, with the exception of the judges, the speaking was felt to be an unpalatable novelty by most of the members. Mr. D. Elliott<sup>1</sup> even proposed that members should be allowed to read their speeches on the ground

**Arrangement of seats in the Council** that many members would not be able to speak *visu voce*. He gave himself as an instance. But as he had made an excellent speech in proposing his motion, his

**Speeches**

<sup>1</sup> Nominated by the Government of Madras.

*argumentum ad hominem* was held to be null, and his suggestion was negated without a division. The Council has already done a great deal of work, and I have no doubt will fulfil the expectations it has raised.

## II. Letter to Sir Charles Wood,<sup>1</sup>

September 18, 1854.

You have instituted by law an independent body of ten or twelve English gentlemen, and it is right you should know early that you will find them asserting their legislative independence. They will, I am certain, receive with respect any reports of the Commission<sup>2</sup> which the Directors may send. They will consider them with care. But they will assuredly not submit their legislation for the previous information of the Commission, nor will they stay their legislation to await indefinitely what the commission may be expected to bring forth.<sup>4</sup>

Independence of the  
Legislative  
Council

## III. Letter to Sir Charles Wood, March 16, 1855.

I must be guided by the Statute of 1853. Its provisions have given to the Legislative Council the independence which I have ascribed to it. The

Relations  
between  
Governor-  
General  
and  
Legislative  
Council

<sup>1</sup> President of the Board of Control.

<sup>2</sup> The reference is to the Law Commission appointed on November 9, 1853, in accordance with the terms of the Charter Act of 1853. The first Law Commission was appointed in 1834 in accordance with the terms of the Charter Act of 1833. It consisted originally of Macaulay and of three civil servants—one from each Presidency. This Commission prepared the draft of the Indian Penal Code, which did not become law until 1860. The Commission lost its importance after Macaulay's departure for England. The second Commission consisted of eight members and sat in London till 1856. In four valuable reports the Commission suggested the amalgamation of the Supreme and *Sadr* Courts and the preparation of a uniform code of civil and criminal procedure. To its labours may be attributed the passing of the Code of Civil Procedure (1859), Macaulay's Penal Code (1860) and the Code of Criminal Procedure (1861) as also the constitution of the High Courts (1861).

<sup>4</sup> This is Lord Dalhousie's reply to Sir Charles Wood's suggestion that no legislation should be introduced without prior submission to London.

Governor-General cannot help himself. Except in the final veto after the passing of an Act, he has none of that overruling power over the Legislative which the law gives him over the Supreme Council.

#### IV. Minute, February 28, 1854.

A Council was appointed as the Legislature of India which was no longer identical with the Supreme Council, but included divers other members, and exercised its functions by separate and distinct proceedings of its own.

The organization of the Legislative Council proved to be a work which involved great labour, and was attended with many difficulties. The proceedings of the Council, however, were speedily reduced to form. The duties of legislation have subsequently been laboriously and faithfully performed. The public has long since had access to its deliberations. Its debates and papers are printed and published; and I trust, and believe that Parliament and the public will each year see reason to be more and more content with the manner in which the Legislative Council of India will fulfil the purposes for which it was established.<sup>1</sup>

### 52. SIR CHARLES WOOD ON THE LEGISLATIVE COUNCIL.

#### I. Letter to Lord Dalhousie, December 23, 1854.

...I am afraid that you are inclined to place them (*i.e.*, the Members of the Legislative Council) in a position which I do not think and never intended that they should occupy. I never wished to raise up a great independent body in India. I look upon all the

<sup>1</sup> Lord Dalhousie wrote in a private letter on July 22, 1854, "Our Legislative Council is getting on really very well. Most of them are as yet a little afraid of the sound of their own voices, but we get through a good deal of business, and I play the compound part of the Speaker and old Shafterbury (Chairman of Committees, H. of L.), I flatter myself, with much effect."



Councils, Secretaries, etc., as so many machines for lightening the labour of the Governor-General, and for doing what I may call the mechanical work of the Government. I have made him more absolute than he was in the Executive Council, and I do not wish to make the Legislative Council a body which does more than aid him in law-making. The Executive Council is to aid him in administering, the Legislative Council in law-making. I admit of course that the latter must be more independent, but I do not wish to make it a body that is likely to take upon itself more weight or authority than is necessary for the purpose of elaborating laws. I do not look upon it, as some of the young Indians do, as the nucleus and beginning of a constitutional Parliament in India.

Legislative Council not to be a Parliament in embryo

## II. Speech in House of Commons, June 6, 1861.

The Council, quite contrary to my intention, has become a sort of debating society or petty Parliament. It was certainly a great mistake that a body of twelve members should have been established with all the forms and functions of a Parliament. They have standing orders nearly as numerous as we have, and their effect has been, as Lord Canning stated, to impede business.

I think that the general opinion both in India and England condemned the action of the Council when it attempted to discharge functions other than those which I have mentioned—when it constituted itself a body for the redress of grievances, and engaged in discussions which led to no practical result. I find that the Vice-President, Sir Lawrence Peel, expressed a very decided opinion against it, and says of the Council in a short memorandum: "It has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth. These obvious objections were pointed out to me by the Government of India last year."

Legislative Council exceeded its powers

### 53. LORD PALMERSTON'S SPEECH ON GOVERNMENT OF INDIA BILL<sup>1</sup>, 1858.

(House of Commons, February 12, 1858)

In making that proposal I feel myself bound, in the first place, to say that I do not do it in any spirit of hostility to the East India Company, or as meaning thereby to imply any blame or censure upon the administration of India under that corporation. I believe the East India Company has done many good things in India. I believe that its administration has been attended with great advantage to the population under its rule. And it is not on the ground of any delinquency on the part of the Company, but on the ground of the inconvenience and injurious character of the existing arrangements, that I propose this measure to the House. It is perhaps one of the most extraordinary facts in the history of mankind that these British Islands should have acquired such an extensive dominion in a remote part of the globe as that which we exercise over the continent of India . . . it is quite as remarkable, quite as singular, that a nation like this, in which the science of government is perhaps better understood than in any other, in which the principle of popular representation has so long been established, should have deliberately consigned to the care of a small body of commercial men the management of such extensive territories, such vast interests, and such numerous populations . . . But this country never designedly did any such thing. The existing state of things grew up gradually from a very small beginning. The original settlers began with a factory, the factory grew into a fort, the fort expanded to a district, and the district to a province, and then came collisions with less civilized neighbours, injuries to be resented, attacks to be repelled, and conflicts which always ended in

Company  
praised

Anomaly of  
government  
of India by  
the Company

<sup>1</sup> Palmerston's Ministry resigned soon after the introduction of this Bill. A fresh Bill was then introduced by Lord Derby's Ministry and passed by Parliament. The two Bills differed only in certain details, e.g., composition of the India Council.

victory and extension of territory. So, gradually, from one transaction to another, grew up that state of things in which the East India Company found itself invested with vast commercial privileges and with most important political functions. This state of things continued up to the year 1784, when there was an infusion of responsibility in respect of its political and administrative functions into the affairs of the Company by the establishment of the Board of Control. Matters went on under this new arrangement for a number of years, during which the Company continued, subject to a slight interference from the Board of Control, to discharge its political functions, and at the same time to exercise all its commercial rights. One would have imagined that in a country like this that first step would have been followed up ; that before anything else was done the reflective British nation would have pursued the course inaugurated in 1784, and that, as the effect of the measure then adopted was to limit to a certain degree the political functions of the Company, the next step would have been to take them away altogether, and to leave the Company in its original position as a trading association. However, it happens that in this country commercial matters often attract more attention and excite deeper interest than political affairs, and the next step was, not to meddle further with the political functions of the Company, but to take away all the commercial privileges which originally constituted the foundation of its existence. Accordingly, in the year 1833 the Company altogether ceased to be a commercial association, and became, one may say, but a phantom of its original body. It lost the commercial character for which it was originally founded, and continued to be merely a political instrument, by means of which the administration of India was carried on. Now, Sir, I venture to think that the arrangement so made was a most inconvenient and most cumbrous arrangement. The principle of our political system is that all administrative functions should be accompanied by Ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown ;

Unpremeditated growth of Company's power

Pitt's India Act

Why the process of divesting the Company of political functions was not followed up

Company deprived of commerce and reduced to a wholly political body

Criticism of Company's system of government

'Double  
Government'  
and  
conflict of  
responsi-  
bility

but in this case the chief functions in the government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much India stock. I think that that of itself is a most objectionable arrangement. . . . What can be more cumbrous than the existing system of Indian administration which is called by the name of the 'double government' ? In the debates of 1853, when the last India Bill was passed, the right hon. gentleman the Member for Buckinghamshire (Mr. Disraeli) asked who was the Government of India, and to whom he was to look as the authority responsible for the administration of that vast empire. Why, Sir, there is no responsibility, or rather there is a conflict of responsibility. The Directors possess a power paramount, as the right hon. gentleman said, to everything else, the power of recalling the Governor-General, by which any great system of policy may be at once interrupted. And they have this power, although the Governor-General must have been appointed by the Crown, and the appointment sanctioned by the Directors. The functions of Government and the responsibility have been divided between the Directors, the Board of Control, and the Governor-General in India; the Board of Control representing the Government of the day, responsible to this House, responsible to public opinion, appointed by the Crown, and exercising functions delegated by it; the Court of Directors, elected by the gentlemen and ladies who happen to be holders of India stock, many of whom are totally ignorant of everything relating to Indian interests, and perhaps knowing nothing about Calcutta, Bombay, or Madras, except what they learn from the candidates for the Directorship as to the presidency to which the cadetship is to belong which is promised in return for their votes. The Directors are undoubtedly, in general, men of great experience and knowledge of India, but they are elected by a body of persons who have no peculiar faculty for choosing persons qualified to govern a great

Three  
governing  
authorities :  
Directors,  
Board of  
Control,  
Governor-  
General

Empire in the East.' Then comes the Governor-General, invested with great, separate, and, independent powers, and among these three authorities it is obvious that dispatch and unity of purpose can hardly by possibility exist . . . before a dispatch upon the most important matter can go out to India it has to oscillate between Cannon Row and the India House. . . .

Results of divided responsibility—delay and half-hearted measures

it is proposed by one party, altered by the other, altered again by the first, and sent back to the other . . . The result in cases of

material difference must necessarily be a middle term, satisfying the opinions of neither, unsatisfactory therefore to both, and probably less advantageous to the public service than the opinion of either would have been had it been entirely adopted. Therefore I say that this system of check and counter-check may be

Too many checks and counter-checks

carried too far. There is no doubt that certain checks are requisite in every political machine ; but you may multiply your checks and counter-checks to such an extent that the functions of the machine, which are intended only to be controlled, are paralysed for every useful purpose. Then what, let me ask, is the position in which Her Majesty's Government stand in this

House ? When Indian questions are discussed, it is the constant habit of those who take part in the debate, criticizing and impugning what has been done, to hold Her Majesty's Government responsible for everything that occurs. But Her Majesty's Government cannot be fairly answerable for things over which they have not a perfect control, and which they cannot entirely direct. It frequently happens, indeed, that the Government of the day are made responsible for acts which

Imperfect control of British Cabinet over Company's affairs

were done without their consent, and probably in some cases much to their dissatisfaction. . . . I say, then, it is most desirable that this complicated machine should be simplified and reduced in fact and form to that which it is imagined to be, but which it practically is not . . .

I say, then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete respon-

Necessity of governing India through the Crown

Crown  
administra-  
tion would  
mean res-  
ponsible  
administra-  
tion

No change  
required in  
existing  
arrange-  
ments in  
India

sibility should rest, and that, whereas in this country there can be but one governing body responsible to the Crown, to Parliament, and to public opinion, consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the principles and practice of our constitution, as it would be in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Minister of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct, instead of being, as now, mainly administered by a set of gentlemen who, however respectable, however competent for the discharge of the functions entrusted to them, are yet a totally irresponsible body, whose views and acts are seldom known to the public, and whether known or unknown, whether approved or disapproved, unless one of the Directors happens to have a seat in the House, are out of the range of Parliamentary discussion. Again, as regards our interests in India, I may state at once that the Bill which I am about to propose to the House is confined entirely and solely to a change in the administrative organization at home, and that we do not intend to make any alteration in the existing arrangements in India. In fact, if Parliament were to adopt the measure which we are about to propose, the only difference, as far as India is concerned, would be, that the next dispatch would go out signed by the President and the Council for Indian affairs, instead of by the Court of Directors, and that the reply would be addressed to the President of the new Board, instead of to the Chairman of the body sitting in Leadenhall Street. Now, I believe there can be no doubt that, so far as the impression on the minds of the people of India is concerned, the name of the sovereign of a great empire like this must be far more respected, far more calculated to produce moral and political impressions, than the name of a Company of merchants, however respectable and able they may be. We have to

deal, in that country, with Princes, some ruling independently and some in a state of modified dependence upon us, and with feudal chiefs proud of their position, cherishing traditionary recollections of a wide empire, and of great sovereigns to whom their ancestors owed allegiance. How can we expect such men to feel any great respect for a mere company of merchants? The respect they feel, the allegiance they yield, would be increased ten-fold if the one were given and the other tendered to the sovereign of a great and mighty empire.<sup>1</sup> I believe, in fact, that what gives force to the Company in India is not the fame or authority of the Company itself, but the knowledge which the people have that behind the Company, and strengthening it, is the power of the British empire, and that, although the ruler may be an officer of a commercial association in name, the real power which they have to look up to is the power of the sovereign of this great country. I am, therefore, satisfied that the transfer of the Government of India to the Crown would, as far as its effect upon the people of India is concerned, be equivalent to a large reinforcement of troops; that the impression which would be produced would be most advantageous, and would tend to consolidate and strengthen the moral and political influence of England in these vast regions of the world. . . .

Government by the Sovereign would produce a powerful impression on the Princes and people of India

. . . . Will, then, any man pretend that a single Government at home will not be a much more effectual instrument for the purpose than a double government? Will any man pretend to tell me, that with a view to rapidity of discussion and execution, unity of purpose, and responsibility to the public, a

Proposed system more effective and prompt than existing system

<sup>1</sup> The Kings of Burma were always reluctant to negotiate on equal terms with the Governor-General. King Tharrawaddy (1837—1845) said, "I will not send an embassy to Bengal; if I send one, it shall be to the King of England. I know nothing of the Goombhane (i.e., Company) and will not acknowledge him. He is an officer who receives pay and is not a King. Let him correspond with his equal, the Governor of Rangoon. I will receive no communication from him or in his name." See A. C. Banerjee, *Annexation of Burma*, pp. 30, 241—242.

government administered by the responsible advisers of the Crown would not be a far more efficient instrument for everything to be done here than the existing conflict of checks and counter-checks, the system of previous communications and subsequent communications, of objections to a dispatch and its transfer by cabs from one part of the town to another, by which delay was created, so that a dispatch, which ought to go out to-morrow, might not go out for a month, or be ready until it was too late to send it out? Why, no reasonable man will venture to get up and tell the House that the present machine can be so effective and so powerful a machine for administration at home as the machine we propose to substitute for it. Will any man acquainted with India tell me that the name of the Company—which is now pretty well seen through by all the natives in India—can have half, or the tenth part of the powerful influence the name of the Crown would carry with it? I declare it is nonsense to say that the Indian chiefs would not feel ten times more respect for the Rajah of England than for the name of any unknown Company. Well, then, I say, if we look to England, the machine we propose to substitute is a much more powerful machine, and if we look to India it is a machine infinitely more influential than the existing one. . . .

Proposed system more likely to draw respect from Indian Chiefs . . . However, we shall be told by some that . . . if we transfer the government to the Ministers responsible to Parliament, we shall have Indian affairs made the subject and plaything of party passions in this House, and that great mischief would arise therefrom . . . I do not think so ill of this House as to imagine that it would be disposed, for factious purposes, or for the momentary triumph of party, to trifle with the great interests of the country as connected with the administration of our Indian affairs. . . . I own, with all respect for the Court of Directors, that I cannot bring myself to think that Parliament is less capable of wisely administering the great affairs of state in connection with India than the Court of Directors in Leadenhall Street. I am not afraid to

No danger of India being made plaything of party passions

Parliament not less competent than Directors



trust Parliament with an insight into Indian affairs. I believe, on the contrary, that if things have not gone so fast in India as they might have done—if the progress of improvement has been somewhat slower than might have been expected, that effect has arisen from the circumstance that the public of England at large were wholly ignorant of Indian affairs, and had turned away from them, being daunted by the complications they imagined them to be involved in ; and because Parliament has never had face to face . . . men personally and entirely responsible for the administration of Indian affairs. No doubt a good deal has been done in the way of substantial improvement of late years, but that which has been done I venture to say has been entirely the result of debates in this and the other House of Parliament. . . . Therefore, so far from being alarmed at the consequences which may arrive from bringing Indian affairs under the cognizance of Parliament, I believe that a great benefit to India, and through India to the British nation, will result therefrom. . . .

Slowness of progress in India due to ignorance of British public

Parliamentary debates led to progress in India

. . . Sir, I trust that Parliament will feel that great power is not given to nations without corresponding duties to be performed. We have, by an almost miraculous train of events, been entrusted with the care of the destinies of 150 or 160 millions of men—with the government, directly or indirectly, of a vast empire larger in extent than the whole face of Europe, putting the Russian empire out of the question. That is a task which involves great responsibility. Do not imagine that it is the intention of Providence that England should possess that vast empire, and that we should have in our hand the destinies of that vast multitude of men, simply that we may send out to India the sons of gentlemen or of the middle classes to make a decent fortune to live on. That power has been entrusted to us for other, and better purposes ; and, . . . I think it is the duty of this nation to use it in such a manner as to promote, as far as they can, the instruction, the enlightenment, and the civilization of those great populations which are now subject to our rule. . . .

England's responsibility for India

Parliament and British public should be kept in touch with Indian affairs We ought to . . . remember that we have a great duty to fulfil in India, and I am sure that that duty will be best discharged if we commit its performance to the hands of men who will be accountable to Parliament for their conduct, and who feel themselves bound to acquaint the public of this country, step by step, with arrangements which they make. . . .

## 54. THE GOVERNMENT OF INDIA ACT, 1858.

(21 and 22 Vict., C. 106)

**An Act for the Better Government of India,  
August 2, 1858.**

Preamble Whereas by the Government of India Act, 1853, the territories in the possession and under the Government of the East India Company were continued under such Government, in trust for Her Majesty, until Parliament should otherwise provide, subject to the provisions of that Act, and of other Acts of Parliament, and the property and rights in the said Act referred to are held by the said Company in trust for Her Majesty for the purpose of the said Government :

And whereas it is expedient that the said territories should be governed by and in the name of Her Majesty, Be it enacted. . . .

1. The Government of the territories now in the possession or under the Government of the East India Company and all powers in relation to Government vested in, or exercised by, the said Company in trust for Her Majesty, shall cease to be vested in, or exercised by, the said Company ; .

And all territories in the possession or under the government of the said Company, and all rights vested in, or which if this Act had not been passed might have been exercised by the said Company, in relation to any territories, shall become vested in Her Majesty, and be exercised in her name ; and for the purpose of this Act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may be

come vested in Her Majesty by virtue of any such rights as aforesaid.

2. India shall be governed by and in the name of Her Majesty ; and all rights in relations to any territories which might have been exercised by the said Company if this Act had not been passed shall and may be exercised by and in the name of Her Majesty as rights incidental to the government of India ; and all the territorial and other revenues of or arising in India and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this Act had not been passed shall be received for and in the name of Her Majesty, and shall be applied and disposed of for the purposes of the Government of India alone, subject to the provisions of this Act.

'India' to be governed by and in the name of the Queen

3. Save as herein otherwise provided, one of Her Majesty's Principal Secretaries of State shall have and perform all such or the like powers and duties in anywise relating to the Government or revenues of India, and all such or the like powers over all officers appointed or continued under this Act, as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India in relation to such government or revenues, and the officers and servants of the said Company respectively, and all such powers as might have been exercised by the said Commissioners alone ;

Secretary of State vested with powers exercised by the Company

And any warrant of writing under Her Majesty's Royal Sign Manual which by the Government of India Act, 1854, or otherwise, is required to be countersigned by the President of the Commissioners for the Affairs of India, shall in lieu of being so countersigned be countersigned by one of Her Majesty's Principal Secretaries of State.

\* \* \* \*

6. In case Her Majesty be pleased to appoint a fifth Principal Secretary of State, there shall be paid

**Salary of Secretary of State and Under-Secretaries to be paid out of Indian revenues** out of the revenues of India to such Principal Secretary of State and his Under-Secretaries respectively the like yearly salaries as may for the time being be paid to any other of such Secretaries of State and his Under-Secretaries respectively.

**Council of India** 7. For purposes of this Act a Council shall be established, to consist of fifteen members, and to be styled the Council of India; and henceforth the Council of India now bearing that name shall be styled the Council of the Governor-General of India.

**Composition of Council of India** 8. Within fourteen days after the passing of this Act the Court of Directors of the East India Company shall from among the persons then being Directors of the said Company or having been theretofore such Directors, elect seven persons to be with the persons to be appointed by Her Majesty as hereinafter mentioned the first Members of the Council under this Act.

**Appointment of members of Council of India** 9. Every vacancy happening from time to time among the Members of the Council appointed by Her Majesty, not being Members so appointed by reason of the refusal or neglect of the Court of Directors or the refusal to accept office hereinbefore mentioned, shall be filled up by Her Majesty, by Warrant under her Royal Sign Manual, and every other vacancy shall be filled up by the Council by election made at a meeting to be held for that purpose.

**Qualifications required for appointment to Council of India** 10. The major part of the persons to be elected by the Court of Directors and the major part of the persons to be first appointed by Her Majesty after the passing of this Act to be members of the Council, shall be persons who shall have served or resided in India for ten years at the least, and (excepting in the case of late and present Directors and Officers on the Home establishment of the East India Company who shall have so served or resided), shall not have last left India more than ten years next preceding the date of their appointment; and no person other than a person so qualified shall be appointed or elected to fill any vacancy in the Council unless at the time of the appointment or election nine at the least of the con-

tinuing members of the Council be persons qualified as aforesaid.

11. Every member of the Council appointed or elected under this Act shall hold his office during good behaviour ; provided that it shall be lawful for Her Majesty to remove any such member from his office upon an address of both Houses of Parliament.

Tenure of members of Council of India

12. No member of the Council appointed or elected under this Act shall be capable of sitting or voting in Parliament.

Members of Council of India not to sit in Parliament

13. There shall be paid to each member of the Council the yearly salary of one thousand two hundred pounds out of the revenues of India.

14. Any member of the Council may, by writing under his hand, which shall be recorded in the minutes of the Council, resign his office, and it shall be lawful for Her Majesty, by Warrant under her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to grant to any person who, having held the office of Member of the Council for the period of ten years or upwards, shall so resign by reason of infirmity disabling him from a due execution of the duties of the office, a retiring pension during life of five hundred pounds : provided, that if at any time hereafter it would appear to Parliament expedient to reduce the number or otherwise deal with the constitution of the said Council, no member of Council who has not served in his office for a period of ten years shall be entitled to claim any compensation for the loss of his office or for any alteration in the terms and conditions under which the same is held.

Resignation of membership of Council of India

Pension for members of Council of India

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19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. But every order or communication sent to India shall be signed by one of the Principal Secretaries of State ; and, save as expressly provided by this Act, every order in the United King-

Business of Council of India

Secretary of State to be channel of communications between England and India

dom in relation to the government of India under this Act shall be signed by such Secretary of State ; and all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

Committees of Council of India

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to rearrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

President and Vice-President of Council of India

21. The Secretary of State shall be the President of the Council, with power to vote ; and it shall be lawful for such Secretary of State in Council to appoint from time to time any member of such Council to be Vice-President thereof ; and any such Vice-President may at any time be removed by the Secretary of State.

Procedure for meetings of Council of India

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council shall and may be exercised at meetings of such Council, at which not less than five members shall be present ; and at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside ; and in the absence of the Secretary of State and Vice-President, one of the members of the Council present shall be chosen by the members present to preside at the meeting : and such Council may act notwithstanding any vacancy therein. Meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct : provided that one such meeting at least be held in every week.

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes

at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final ; and in case of an equality of votes at any meeting of the Council, the Secretary of State, if present, and in his absence the Vice-President, or presiding member, shall have a casting vote ; and all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State ; and in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same that he may have stated at the meeting, be entered in like manner.

Special position of Secretary of State in relation to Council of India

24. Every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless the same has been submitted to a meeting of the Council, be placed in the Council room for the perusal of all members of the Council during seven days before the sending or making thereof, except in the cases hereinafter provided ; and it shall be lawful for any member of the Council to record in a minute book to be kept for that purpose his opinion with respect to each such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

Procedure relating to despatches to India

25. If a majority of the Council record as aforesaid their opinions against any act proposed to be done the Secretary of State shall, if he do not defer to the opinions of the majority, record his reasons for acting in opposition thereto.

Secretary of State may override Council of India

26. Provided that where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of the votes at a meeting is hereby made necessary, is urgently required, the communica-

Urgent communications to India

tion may be sent or order given notwithstanding the same may not have been submitted to a meeting of the Council or deposited for seven days as aforesaid, the urgent reasons for sending or making the same being recorded by the Secretary of State, and notice thereof being given to every member of the Council, except in the cases hereinafter mentioned.

Communications to Governments and officers in India

27. Provided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the Officers or servants of the said Company, may, after the commencement of this Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of State without having been submitted to a meeting, or deposited for the perusal of the members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid.

'Secret' despatches from India may not be communicated to Council of India

28. Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked "secret" by the authorities sending the same; and such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct.

Appointment of Governor-General and Governors

29. The appointments of Governor-General of India and Governors of Presidencies in India now made by the Court of Directors with the approbation of Her Majesty, and the appointments of Advocate-General for the several Presidencies now made with the approbation of the Commissioners for the Affairs of India, shall be made by Her Majesty by warrant under her Royal Sign Manual;

Appointment of Lieutenant-Governors

The appointment of the Lieutenant-Governors of provinces or territories shall be made by the Governor-General of India, subject to the approbation of Her Majesty; and all such appointments shall be subject



to the qualifications now by law affecting such offices respectively.

30. All appointments to offices, commands and employments in India, all promotions, which by law or under any regulations, usage or custom, are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions, and restrictions now affecting such appointments respectively ; but the Secretary of State in Council, with the concurrence of a majority of Members present at a meeting, shall have the like power to make regulations for the division and distribution of patronage and power of nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, with the approbation of the Commissioners for the Affairs of India, as if this Act had not been passed. Patronage

\* \* \* \*

32. With all convenient speed after the passing of this Act Regulations shall be made by the Secretary of State in Council, with the advice and assistance of the Commissioners for the time being, acting in execution of Her Majesty's Order in Council of twenty-first May one thousand eight hundred and fifty-five for regulating the admission of persons to the Civil Service of the Crown, for admitting all persons being natural-born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations, under the superintendence of the said last mentioned Commissioners or of the persons for the time being entrusted with the carrying out of such regulations as may be, from time to time, estab- Indian Civil Service

lished by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown ; and the candidates who may be certified by the said Commissioners or other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations ; and such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council:

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty ; and the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

\* \* \* \*

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council ; and all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would

have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the Chairman or Deputy Chairman of the Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

39. All lands and hereditaments, monies, stores, goods, chattel, and other real and personal estate of the said Company, subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the government of India.

Properties  
of the  
Company  
vested in  
the Crown

\* \* \* \*

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

Expenditur  
of revenues  
of India  
subject to  
control of  
Secretary &  
State in  
Council

\* \* \* \*

53. The Secretary of State in Council shall, within the first fourteen days during which Parliament may be sitting, next after the first day of May in every year, lay before both Houses of Parliament an account for the financial year preceding the last completed of the annual produce of the revenues of India, . . . . and such account shall be accompanied by a statement prepared from detailed reports from each Presidency and district in India in such form as shall best exhibit the moral and material progress and condition of India in each such Presidency.

Accounts  
for India  
to be annual-  
ly laid  
before Par-  
liament by  
Secretary  
of State  
in Council

Control of  
Parliament  
over war  
in India

54. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament be not sitting at the end of such three months, then within one month after the next meeting of Parliament.

55. Except for preventing or repelling actual invasion of Her Majesty's Indian Possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the expenses of any military operation carried on beyond the external frontier of such possessions by Her Majesty's forces charged upon such revenues.

\* \* \* \*

Governor-General  
may exercise  
his powers  
before  
taking  
his seat  
in the  
Council

63. In case the person who shall be entitled under any provisions for appointment to succeed to the office of Governor-General of India upon a vacancy therein, or who shall be appointed absolutely to assume the office, shall be in India (upon or after the happening of the vacancy, or upon or after the receipt of such absolute appointment, as the case may require), but shall be absent from Fort William in Bengal, or from the place where the Council of the Governor-General of India may then be, and it shall appear to him necessary to exercise the powers of Governor-General before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment and his intention to assume the said office of Governor-General ; and after such proclamation, and thenceforth until he shall repair to Fort William or the place where the Council may assemble, it shall be lawful for him to exercise alone, all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers,

except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council; provided that all acts done in the said Council after the date of such proclamation but before the communication thereof to such Council, shall be void, subject nevertheless to revocation or alteration by the person who shall have so assumed the said office of Governor-General; and when the office of Governor-General is assumed under the foregoing provision, if there be at any time before the Governor-General takes his seat in Council, no Vice-President of the Council authorised to preside at meetings for making laws and regulations (as provided by Section 22 of the Government of India Act, 1853), the senior ordinary member of Council therefore sent shall preside therein, with the same powers as if a Vice-President had been appointed and were absent.

Vice-President of Governor-General's Council

\* \* \* \*

65. The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company.

Secretary of State in Council may sue and be sued

\* \* \* \*

67. All treaties made by the said Company shall be binding on Her Majesty; and all contracts, covenants, liabilities and engagements of the said Company made, incurred or entered into before the commencement of this Act, may be enforced by and against the

All treaties, contracts, etc. made by the Company remain binding on the Crown

Secretary of State in Council in like manner and in the same Courts as they might have been by and against the said Company if this Act had not been passed.

68. Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary of State in Council in their official capacity ; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenue of India.

## 55. LORD DERBY'S SPEECH ON THE GOVERNMENT OF INDIA BILL,<sup>1</sup> 1858.

(House of Lords, July 15, 1858)

India  
should be  
governed  
in India

My Lords, I must, in the first place, observe that I think the title of the Bill is open to the objection of being somewhat infelicitous. It is not, as it purports to be, a Bill for the better Government of India. It is a Bill which will, I hope, tend to the better Government of India ; but the Government of India must, as cannot be too often repeated, be on the whole carried on in India, and this Bill does not pretend to deal with all those complicated and difficult questions which will, no doubt, within the next few years, frequently engage the anxious consideration of Parliament and of the country. It does not pretend to deal with the revenue, with the finance, with the land regulations, with the condition of the natives, and the possibility of extending their admission into the public service after this unhappy revolt shall have been suppressed. It does not profess to deal with any of these grave and extensive questions ; and although such questions will no doubt engage the attention of Parliament, at future periods, and although Parliament will doubtless feel it to be both its right and its duty to lay down broad

<sup>1</sup> See footnote on p. 254.

principles of action with regard to most of them, I cannot help expressing my opinion that with regard to the details of the Government of India, the less interference there is on the part of Parliament the better prospect will there be of securing happiness and contentment of the people of India<sup>1</sup>

The less Parliamentary interference in Indian affairs, the better

I consider that the Government of the East India Company, both here and in India, has been marked by singular prudence and ability<sup>2</sup>, and I should be very sorry if this Bill was considered—what it was represented to be at a meeting held at the India House yesterday—a Bill of Pains and Penalties against the Directors. It is nothing of the sort. I believe no men could have conducted business better under the system which they found in operation than the Directors of the East India Company have done. But the complaints against the system itself, the encumbrances connected with its machinery, the delay which unavoidably attended the most important transactions, make it quite obvious that in any remodelling which may take place, India must be put on the same footing as the other possessions of the Crown, and be administered by a Minister responsible to Parliament. I may add that, in point of fact, the transfer of authority to the Crown is more nominal than real, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay, I believe that, with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control. Not only does the President of the Board of Control possess the power of altering or of vetoing the instructions proposed by the Court of Directors, but he has the power, and it has been sometimes exercised, of sending out

Company's rule prudent and able .

Defects of the existing system

Transfer of India to the Crown no more than a formal change

Large powers of the President of Board of Control

<sup>1</sup> Compare Lord Palmerston's view—Document No. 53.

<sup>2</sup> For a different view see the speech of Sir George Cornewall Lewis in the House of Commons, February 12, 1858. (Extracts reprinted in Keith, *Speeches and Documents on Indian Policy*, Vol. I, pp. 342-355.)

instructions diametrically opposed to those which the Court intended. There is a question whether the Court might not have interposed delay, and even persisted, until compelled by a mandamus ; but in point of fact they have generally been obliged to yield to the suggestions of the President of the Board of Control. We all remember that my noble Friend below me (The Earl of Ellenborough), who has on various occasions been at the head of the Board of Control, told the Committee that when he was in office the Government of India was in his hands altogether<sup>1</sup>. Upon the subject, then, of the transfer of the powers of the Court of Directors to a responsible Minister of the Crown, and of carrying on all business both here and in India in the name and by the direct authority of the Crown, there was no difference of opinion between the two parties into which the House of Commons was divided. Nor was there any difference of opinion on this point—that although it was expedient (1) transfer to the Crown, (2) establishment of a Council to advise Minister in charge of India that the business should be conducted by a high Ministerial officer, who should, like the holders of other offices in the Government, be appointed by the Crown and responsible to Parliament, yet, inasmuch as it is impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good Government of India to associate with the Minister a Council more or less numerous by whom he might be assisted and advised. It was with regard to the constitution of that Council that there existed the main difference of opinion between Her Majesty's late Government<sup>2</sup> and Her Majesty's present Government. Her Majesty's late Government proposed that the Council should consist of eight members who should each hold office for six years, all nominated by the Minister of the Crown, and two of whom should

Whigs and Tories agree about the necessity of (1) transfer to the Crown, (2) establishment of a Council to advise Minister in charge of India

Whigs and Tories differ about composition of Council

Proposed composition of Council in Palmerston's Bill

<sup>1</sup> Lord Palmerston's view was different. (Document No. 53).

<sup>2</sup> Lord Palmerston's Ministry.



retire from office each alternate year. Now, the present Government was of opinion that, although in that manner the President of the Board of Control might surround himself with many able and experienced advisers, due provision was not made for securing to the Council that character of independence which was absolutely essential to the proper discharge of its functions. It was quite clear that when one-third of the members of the Board had been only recently appointed by the actual President of the Board, and another third would soon vacate their offices, and were hoping, perhaps, to be re-appointed by the same Minister, there would be great temptation presented to the Council to defer, more than they ought to do, to that Minister, and to refrain from freely expressing their opinions. It was, moreover, the opinion of the members of the present Government that a Council of eight members would not be sufficiently numerous, having regard to the great extent of the duties which would have to be performed, and we thought that eighteen—the present number of the Directors—were not more than were required by the business of India. The Council of India, we thought, ought not to be—as the Directors may have been before—a screen between the Minister and Parliament, but a body of men well acquainted with the affairs of India, to give the Minister advice, which, on his own responsibility, he might be at liberty either to accept or reject. I have heard it said that, according to the peculiar character of the President of the Board of Control, the Council, as proposed to be constituted, would be either his masters, his advisers, or his puppets. It must, no doubt, depend on the character and the self-reliance of the head of any great department how far he is influenced or controlled, how far he is guided, by those who fill permanent situations, and to what extent he is the master of his own department. For my part, I certainly hope and believe that the Council proposed by the Government under this Bill will be found neither the masters of the Secretary of State nor his puppets, but that they will prove that, which their qualifications prepare them

Its defects

Proposed composition of Council in Derby's Bill

Relations between Secretary of State and his Council

to be, most valuable advisers to the Minister in all matters relating to India.<sup>1</sup>

\* \* \* \*

The other point to which I wish to advert is the admission to the civil service of India. As the law at present stands, all persons are admitted to that service after such examinations as shall from time to time be prescribed, and under such regulations as may be laid down by the Court of Directors and the President of the Board of Control. That power we now propose to transfer to the Secretary of State. But the Bill, as it stands at present, goes further, I think, than the justice of the case warrants; it gives to the principle of competitive examination that which it has never yet received—namely, the sanction of an Act of Parliament binding the hands of the Executive in all cases, and rendering compulsory a strict adherence to the principle, not of examination, but of competitive examination. It is my intention to move the omission from the clause of the words which render it necessary to the Government to admit candidates to the civil service in the order of their proficiency in the competitive examination, leaving the law as it stands with regard to admission to the Indian Civil Service, subject to such regulations as may be issued by the Secretary of State, with the approval of the Crown, and laid before Parliament....

Civil Service

Objection to competition, but not to examination

<sup>1</sup> Mounstuart Elphinstone observed, "The great point of course is the Council, and I think that proposal will furnish a body of excellent advisers for an honest, able and moderate Secretary (such as Lord Stanley appears to be), and that it will supply the deficiencies of a lazy or indifferent one much better than the ordinary clerk of a Board of Control would do; but that it will afford very little protection against a rash, fanciful and self-willed chief, and none at all against one who shall combine with a ministry in a deliberate plan to appropriate the patronage of India, or to make use of that country in any other way favourable to their own power or stability."

## 56. LORD DALHOUSIE ON TRANSFER OF INDIA TO THE CROWN,<sup>1</sup> 1858.

I am no blind partisan of the E. I. Co., nor believe in the perfection of the Court of Directors, but common prudence and sense ought to forbid our sweeping them away in order to substitute something else in their room, until we have deliberately assured ourselves that the substitute we provide is better than, or at all events as good as, that which we destroy. Most certainly that assurance cannot as yet be felt.

Company should not be abolished without providing a better substitute

Lord Palmerston's bill was as bad as *possible*, if Lord Derby had not actually produced another bill which is very much worse

It is to be feared that we must assume that the Company's separate existence and distinct Government cannot stand. Ever since 1770 it has been the object of never-ceasing popular clamour whenever the popular voice and thought could be fixed on India at all; and ill-founded and unreasonable as the feeling is, I doubt that the British public will never cease to clamour against and vituperate the Company's Government. The effect of this perpetual disparagement of the power that rules India is so mischievous in England, and so doubly mischievous in India, that I really think the abolition of the Company's Raj, though it would be a great evil, would still be a less evil than its continuance, if it is to continue only amidst a perpetual storm of attack, censure, contempt, and calumny in the Parliament of England, and from the Press and the English public of both countries. If the Company's Government is to be abolished, what shall be substituted for it? You cannot govern India as you have attempted to govern the colonies. The colonies have, nearly all of them, an English population, similar in language, religion, feelings, and institutions to those of the mother country. Yet under the government of a Secretary of State at home, the mightiest of our colonies have been lost, and the rest is only preserved to us by our practi-

Popular clamour against Company

Contrast between India and Colonies

<sup>1</sup> Private Letter to Sir George Cooper, April 22, 1858.

Position of  
Secretary of  
State for  
India

cally abandoning the right of really governing them in England. How is it possible, then, to expect that a Secretary of State at home can singly govern India, with a population which is five times as great as that of the mother country and all the colonies put together, and which differs from the mother country in every particular in which the colonies resemble it—in language, feeling, religion, and institutions? It can not be reasonably expected. The class from which such a Secretary of State must be selected is very small. Of the few men who would be politically eligible still fewer could have any intimate acquaintance with the vast Empire of which the Secretary is to have charge. If the Secretary be of the number of those who have no knowledge of the Indian Empire, it would obviously be unsafe to intrust it to his solitary ignorance. If, on the other hand, the Secretary be one of the very few who are well acquainted with Indian Empire, it would be still more dangerous to intrust it to his sole authority; because his special knowledge would be likely, at one and the same time, to make him presumptuous, and to induce his colleagues to give way on every occasion to his superior knowledge. In either case, India would be given over virtually to a despotism which would be full of danger to the public interests. Therefore, if India is henceforth to be governed by a Secretary of State in the Queen's name, something must be devised to provide that check and guidance for his authority which the Court of Directors has hitherto supplied to the Cabinet of the Queen. Lord Palmerston's Council certainly did not do so, for nine nominees of the Crown, remaining in office for only a few years, then going out, and eligible for reappointment, could not possibly form an *independent* check on a Minister invested with the power of reappointing or excluding them as he pleased. In a few years they would insensibly have become the mere tools of the Minister. Lord Derby's Council, again, certainly did not form any check. For (passing over all the objections to the close limitation of qualifications, and the absurdity of many of the modes of election) the

Council

Council was endowed by the bill with no power at all.

Under either Council, and according to either bill, an utterly ignorant Secretary or an over-confident, rash, and presumptuous, though highly instructed and experienced, Secretary would be as much the Padshah of India as ever was Akbar or Aurangzebe—with this mighty difference, that he would rule the Indian Empire at ten thousand miles away from it

Apprehended  
despotism of  
Secretary of  
State

At present I would, if I were Minister, introduce no change at all. I would tell the Parliament frankly that the time of great difficulties was not the time for great administrative changes which nobody could maintain to be immediately indispensable. When mutiny should have been quelled, rebellion put down, peace and order restored (I would say), I would pledge my honour that the whole subject should be brought before the Parliament, but at present the whole attention of the Government should be given to action, and not weakened by dividing it between action and legislation. When the time for legislation came, I would propose that the Home Government of India should, in the main, be assimilated with the Supreme Government of India, which in practice has been found for more than seventy years to work so well and which has achieved so much. I would abolish the Court of Directors and the Board of Control. I would propose that the Government of India in England should be carried on by a Secretary of State, aided by a Board, in the same manner as the Government of India in India is carried on by the Governor-General and Council. . . . I would propose that the Board should consist of the same numbers as the Court of Directors now does, according to the Act of 1853; and that, as now, five should be appointed by the Crown and ten elected by the proprietors of East India stocks as the Directors are now elected. The Crown nominees thus would not outnumber the thoroughly independent members, as they do in Lord Derby's bill. The independent members would be elected, I admit, by an anomalous body, but by a body which, anomalous as it is, has for nearly eighty years in practice elected a

Change  
should be  
postponed  
during  
Mutiny

Dalhousie's  
own plan

Secretary of  
State aided  
by a Board

Composition  
of India  
Board

*governing body of the highest efficiency*—that Court of Directors which has given us our Indian Empire and made it what it is. All business of every description should be transacted by the “India Board,” of which the Secretary of State should sit as President, just as all business is transacted by the G.-G. in Council. Every question should be decided by a plurality of voices—the Secretary (like the G.-G.) having a second or casting vote in event of the Board being equally divided. Moreover, the Secretary (like the G.-G.) should have the power of acting on his own opinion, even though wholly outvoted by the Board, whenever he judged it necessary for the public interest to do so ; provided always that on such occasions he recorded his reasons for so doing, and gave to the members of the Board an opportunity of recording their reasons also. I believe that such a form of Government would give to the home administration that which experience has shown it to have given to the Supreme Government in India, and which all demand for the home administration now—namely, capacity in the members, promptitude of action as well as deliberation, and full responsibility. The Crown, bound to select from those who had served in India, would (if it exercised its power faithfully) always put into the Board five of the best men who were to be got, including some who might shrink from the task of canvassing the proprietors. The elected members would, it is reasonable to suppose, be not less able than the able men who have usually been elected into the Court. They would be independent of the Minister, but no more disposed to thwart or obstruct him than the Court has been. With such a Board the Minister, if ignorant, would have always full command of information, and the best advice on every question that could come before him. If instructed, but rash or presumptuous, he would have men of high ability, of public reputation, of long experience, and of independent character to moderate his action and control his rashness or imprudence. Yet that control could never be carried too far, either by mistaken caution or from

Relations  
between  
Secretary of  
State and  
India Board

Composition  
of India  
Board

Relations  
between  
Secretary of  
State and  
India Board

factionous motives, for the Secretary.....would always have it in his power to overrule his Council and act on his own opinion if he deemed it necessary to do so. And still he would only take so strong a step under deep sense of responsibility, because he would be bound to record his reasons and to let his colleagues record theirs, which, of course, would be called for in Parliament and reviewed there. Thus in all ordinary cases he would have the best information and the best advice, and would probably act with his Board. If his Board were equally divided, a proper preponderance would be given to his opinion, and his casting vote would decide the question as he wished. If his Board were all against him, and offered factionous opposition or created undue delays, he could always beat down opposition and ensure prompt action by deciding and acting without them. And yet he would not dare to do this without sufficient and good reasons; for he must record them, his colleagues would record theirs, and Parliament would review both and judge them.

Parliamentary control over Secretary of State in Council

\* \* \* \*

Above all, this plan would leave no doubt as to where responsibility lay. In every case it must lie on the Secretary. For if he acted against his Board, he is solely responsible for overruling them; if he acted with his Board, he is equally responsible, because it was in his power to overrule them if he pleased. If it be objected that the Board is too numerous for the transaction of business, I admit that the objection exists, but it is not conclusive. The Board of fifteen, we know, can transact the business of India efficiently, because fifteen Directors are now transacting it; and from 1770 to 1833 twenty-four transacted it without difficulty or impediment.

Full responsibility on Secretary of State

My plan....would make the Board of Control and the Board of Directors—now two separate authorities—into one authority. The double government, so called, would be got rid of, while the new system would retain much of the good which the old one possesses, and would acquire advantages which experience has shown to belong to the form of administration long

Virtual abolition of Double Government

existing in India itself . . . I think my project more practical and more likely to succeed, and less accompanied with risk, than the vast changes proposed by Lord Palmerston and Lord Derby.

## 57. PETITION FROM EAST INDIA COMPANY TO PARLIAMENT<sup>1</sup>, 1858.

(February, 1858)

India acquired by the Company without assistance from the Crown

That your petitioners, at their own expense, and by the agency of their own civil and military servants, originally acquired for this country its magnificent empire in the East.

That the foundations of this empire were laid by your petitioners, at that time neither aided nor controlled by Parliament, at the same period at which a succession of administrations under the control of Parliament were losing to the Crown of Great Britain another great empire on the opposite side of the Atlantic.

India ruled without cost to British Exchequer

That during the period of about a century which has since elapsed, the Indian possessions of this country have been governed and defended from the resources of those possessions without the smallest cost to the British Exchequer, which, to the best of your petitioners' knowledge and belief, cannot be said of any other of the numerous foreign dependencies of the Crown.

Parliamentary control over Company's affairs in India

That it being manifestly improper that the administration of any British possession should be independent of the general Government of the empire, Parliament provided, in 1783, that a department of the Imperial Government should have full cognizance of, and power of control over, the acts of your petitioners in the administration of India; since which time the home branch of the Indian Government has been conducted by the joint councils, and on the joint responsibility, of your petitioners and of a minister of the Crown.

<sup>1</sup> This petition was drafted by John Stuart Mill.



That this arrangement has at subsequent periods undergone reconsideration from the Legislature, and various comprehensive and careful Parliamentary inquiries have been made into its practical operation; the result of which has been, on each occasion, a renewed grant to your petitioners of the powers exercised by them in the administration of India.

That the last of these occasions was so recent as 1853, in which year the arrangements which had existed for nearly three-quarters of a century were, with certain modifications, re-enacted, and still subsist.

That, notwithstanding, your petitioners have received an intimation from Her Majesty's Ministers of their intention to propose to Parliament a Bill for the purpose of placing the government of Her Majesty's East Indian Dominions under the direct authority of the Crown—a change necessarily involving the abolition of the East India Company as an instrument of government.

That your petitioners have not been informed of the reasons which have induced Her Majesty's Ministers, without any previous inquiry, to come to the resolution of putting an end to a system of administration, which Parliament, after inquiry, deliberately confirmed and sanctioned less than five years ago, and which, in its modified form, has not been in operation quite four years, and cannot be considered to have undergone a sufficient trial during that short period.

Company  
in the dark  
about  
reasons for  
its aboli-  
tion

That your petitioners do not understand that Her Majesty's Ministers impute any failure to those arrangements or bring any charge, either great or small, against your petitioners. But the time at which the proposal is made compels your petitioners to regard it as arising from the calamitous events which have recently occurred in India.

That your petitioners challenge the most searching investigation into the mutiny of the Bengal army, and the causes, whether remote or immediate, which produced that mutiny. They have instructed the Government of India to appoint a commission for

Company,  
invites en-  
quiry about  
causes of  
Mutiny

conducting such an inquiry on the spot. And it is their most anxious wish that a similar inquiry may be instituted in this country by your [Lordships'] Honourable House ; in order that it may be ascertained whether anything either in the constitution of the Company invites enquiry about causes of Mutiny Home Government of India, or in the conduct of those by whom it has been administered, has had any share in producing the mutiny, or has in any way impeded the measures for its suppression ; and whether the mutiny itself, or any circumstance connected with it, affords any evidence of the failure of the arrangements under which India is at present administered.

That, were it even true that these arrangements had failed, the failure could constitute no reason for divesting the East India Company of its functions, and transferring them to Her Majesty's Government. For, under the existing system, Her Majesty's Government have the deciding vote. The duty imposed upon the Court of Directors is to originate measures and frame drafts of instructions. Even had they been remiss in this duty, their remissness, however discreditable to themselves, could in no way absolve the responsibility of Her Majesty's Government, since the Minister for India possesses, and has frequently exercised, the power of requiring that the Court of Directors should take any subject into consideration, and prepare a draft dispatch for his approval. Her Majesty's Government are thus in the fullest sense accountable for all that has been done, and for all that has been forborne or omitted to be done. Your petitioners, on the other hand, are accountable only in so far as the act or omission has been promoted by themselves.

That under these circumstances, if the administration of India had been a failure, it would, your petitioners submit, have been somewhat unreasonable to expect that a remedy would be found in annihilating the branch of the ruling authority which could not be the one principally in fault, and might be altogether blameless, in order to concentrate all the powers in the branch which had necessarily the decisive share

in every error, real or supposed. To believe that the administration of India would have been more free from error had it been conducted by a Minister of the Crown without the aid of the Court of Directors, would be to believe that the Minister, with full power to govern India as he pleased, has governed ill because he has had the assistance of experienced and responsible advisers.

That your petitioners, however, do not seek to vindicate themselves at the expense of any other authority. They claim their full share of the responsibility of the manner in which India has practically been governed. That responsibility is to them not a subject of humiliation but of pride. They are conscious that their advice and initiative have been, and have deserved to be, a great and potent element in the conduct of affairs in India, and they feel complete assurance that, the more attention is bestowed and the more light thrown upon India and its administration, the more evident it will become that the government in which they have borne a part has been not only one of the purest in intention, but one of the most beneficent in act, ever known among mankind<sup>1</sup>; that, during the last and present generation in particular, it has been, in all departments, one of the most rapidly improving governments in the world; and that, at the time when this change is proposed, a greater number of important improvements are in a state of more rapid progress than at any former period. And they are satisfied that whatever further improvements may be hereafter effected in India can only consist in the development of germs already planted, and in building on foundations already laid, under their authority, and in a great measure by their express instructions.

Company  
proud of its  
work in  
India

That such, however, is not the impression likely to be made on the public mind, either in England, or in India, by the ejection of your petitioners from

<sup>1</sup> For a criticism of this statement see the speech of Sir George Cornwall Lewis in the House of Commons, February 12, 1858. (Extracts reprinted in Keith, *Speeches and Documents on Indian Policy*, Vol. 1, pp. 342-355).

the place they fill in the Indian administration. It is not usual with statesmen to propose the complete abolition of a system of government, of which the practical operation is not condemned, and it might be generally inferred from the proposed measures, if carried into effect at the present time, that the East India Company, having been entrusted with an important portion of the administration of India, have so abused their trust as to have produced a sanguinary insurrection, and nearly lost India to the British empire; and that, having thus crowned a long career of misgovernment, they have, in deference to public indignation, been deservedly cashiered for their misconduct.

Transfer of  
India to  
Crown  
would cast  
a slur on  
the Com-  
pany

That if the character of the East India Company were alone concerned, your petitioners might be willing to await the verdict of history. They are satisfied that posterity will do them justice. And they are confident that even now justice is done to them in the minds, not only of Her Majesty's Ministers, but of all who have any claim to be competent judges of the subject. But, though your petitioners could afford to wait for the reversal of the verdict of condemnation which will be believed throughout the world to have been passed on them and their government by the British nation, your petitioners cannot look without the deepest uneasiness at the effect likely to be produced on the minds of the people India. To them, however incorrectly the name may express the fact, the British Government in India is the Government of the East India Company. To their minds the abolition of the Company will, for some time to come, mean the abolition of the whole system of administration with which the Company is identified. The measure, introduced simultaneously with the influx of an overwhelming British force, will be coincident with a general outcry, in itself most alarming to their fears, from most of the organs of opinion in this country as well as of English opinion in India, denouncing the past policy of the Government on the explicit ground that it has been too forbearing and too considerate

Effect of  
abolition of  
Company on  
the minds  
of Indian  
people

towards the natives. The people of India will at first feel no certainty that the new Government, or the Government, under a new name, which it is proposed to introduce, will hold itself bound by the pledges of its predecessors. They will be slow to believe that a Government has been destroyed only to be followed by another which will act on the same principles and adhere to the same measures. They cannot suppose that the existing organ of administration would be swept away without the intention of reversing any part of its policy. They will see the authorities, both at home and in India, surrounded by persons vehemently urging radical changes in many parts of that policy. And interpreting, as they must do, the change in the instrument of government, as a concession to these opinions and feelings, they can hardly fail to believe that, whatever else may be intended, the Government will no longer be permitted to observe that strict impartiality between those who profess its own creed and those who hold the creeds of its native subjects which hitherto characterized it; that their strongest and most deeply-rooted feelings will henceforth be treated with much less regard than heretofore; and that a directly aggressive policy towards everything in their habits, or in their usages and customs, which Englishmen deem objectionable, will be no longer confined to individuals and private associations, but will be backed by all the power of Government.

India will  
be alarmed

And here your petitioners think it important to observe, that in abstaining as they have done from all interference with any of the religious practices of the people of India, except such as are abhorrent to humanity, they have acted not only from their own conviction of what is just and expedient, but in accordance with the avowed intentions and express enactments of the Legislature, framed 'in order that regard should be had to the civil and religious usages of the natives,' and also that 'suits, civil or criminal, against the natives, should be conducted according to such rules 'as may accommodate the same to the religion and manners of the natives.' That their policy in this respect has been

Concessions  
made to  
Indian senti-  
ments and  
prejudices by  
the Com-  
pany

successful, is evidenced by the fact, that during a military mutiny, said to have been caused by unfounded apprehensions of danger to religion, the heads of the native states, and the masses of the population, have remained faithful to the British Government. Your petitioners need hardly observe how very different would probably have been the issue of the late events, if the native princes, instead of aiding in the suppression of the rebellion, had put themselves at its head, or if the general population had joined in the revolt; and how probable it is that both these contingencies would have occurred, if any real ground had been given for the persuasion that the British Government intended to identify itself with proselytism. And it is the honest conviction of your petitioners that any serious apprehension of a change of policy in this respect would be likely to be followed, at no distant period, by a general rising throughout India.

That your petitioners have seen with the greatest pain the demonstrations of indiscriminate animosity towards the natives of India, on the part of our countrymen in India and at home, which have grown up since the late unhappy events. They believe these sentiments to be fundamentally unjust; they know them to be fatal to the possibility of good government in India. They feel that if such demonstrations should continue, and, especially if weight be added to them by legislating under their supposed influence, no amount of wisdom and forbearance on the part of the Government will avail to restore that confidence of the governed in the intentions of their rulers without which it is vain even to attempt the improvement of the people.

That your petitioners cannot contemplate without dismay the doctrine now widely promulgated that India should be administered with an especial view to the benefit of the English who reside there; or that in its administration any advantage should be sought for Her Majesty's subjects of European birth, except that which they will necessarily derive from their superiority of intelligence, and from the increased prosperity of the people, the improvement of the productive resources

Hostile attitude of Englishmen to Indians

Is India to be governed in the interests of the ruling race?

of the country, and the extension of commercial intercourse. Your petitioners regard it as the most honourable characteristic of the government of India by England, that it has acknowledged no such distinction as that of a dominant and subject race; but has held that its first duty was to the people of India. Your petitioners feel that a great portion of the hostility with which they are assailed, is caused by the belief that they are peculiarly the guardians of this principle, and that so long as they have any voice in the administration of India, it cannot easily be infringed. And your petitioners will not conceal their belief that their exclusion from any part in the government is likely, at the present time, to be regarded in India as a first successful attack on that principle.

That your petitioners, therefore, most earnestly represent to your [Lordships'] Honourable House, that, even if the contemplated change could be proved to be in itself advisable, the present is a most unsuitable time for entertaining it; and they most strongly and respectfully urge on your [Lordships'] Honourable House the expediency of at least deferring any such change until it can be effected at a period when it would not be, in the minds of the people of India, directly connected with the recent calamitous events, and with the feelings to which those events have either given rise or have afforded an opportunity of manifestation. Such postponement, your petitioners submit, would allow time for a more mature consideration than has yet been given, or can be given in the present excited state of the public mind, to the various questions connected with the organization of a Government for India; and would enable the most competent minds in the nation calmly to examine whether any new arrangement can be devised for the Home Government of India, uniting a greater number of the conditions of good administration than the present; and, if so, which among the numerous schemes which have been or may be proposed, possesses those requisites in the greatest degree.

Time unfavourable  
for abolition  
of  
Company

That your petitioners have always willingly

Company always prepared for changes and sacrifices acquiesced in any changes which, after discussion by Parliament, were deemed conducive to the general welfare, although such changes may have involved important sacrifices to themselves. They would refer to their partial relinquishment of trade in 1813; to its total abandonment and the placing of their Commercial Charter in abeyance, in 1833; to the transfer to India of their commercial assets, amounting to £15,858,000, a sum greatly exceeding that ultimately repayable to them in respect of their capital, independent of territorial rights and claims; and to their concurrence in 1853, in the measure by which the Court of Directors was reconstructed, and reduced to its present number. In the same spirit, your petitioners would gladly co-operate with Her Majesty's Government in correcting any defects which may be considered to exist in the details of the present system; and they would be prepared, without a murmur, to relinquish their trust altogether, if a better system for the control of the Government of India can be devised. But, as they believe that in the construction of such a system there are conditions which cannot, without the most dangerous consequences, be departed from, your petitioners respectfully and deferentially submit to the judgment of your [Lordships'] Honourable House their view of those conditions, in the hope that if your [Lordship's] Honourable House should see reason to agree in that view, you will withhold your legislative sanction from any arrangement for the government in question in at least an equal degree with the present.

That your petitioners may venture to assume that it will not be proposed to vest the Home portion of the administration of India in a Minister of the Crown, without the adjunct of a Council composed of statesmen experienced in Indian affairs. Her Majesty's Ministers cannot but be aware that the knowledge necessary for governing a foreign country, and in particular a country like India, requires as much special study as any other profession, and cannot possibly be possessed by any one who has not devoted a considerable portion of his life to the acquisition of it.

Council to  
advise and  
check Minister  
for India



That in constituting a body of experienced advisers to be associated with the Indian Minister, your petitioners consider it indispensable to bear in mind that this body should not only be qualified to advise the minister, but also, by its advice, to exercise, to a certain degree, a moral check. It cannot be expected that the Minister, as a general rule, should himself know India; while he will be exposed to perpetual solicitations from individuals and bodies, either entirely ignorant of that country, or knowing only enough of it to impose on those who know still less than themselves, and having very frequently objects in view other than the interests or good government of India. The influences likely to be brought to bear on him through the organs of popular opinion will, in the majority of cases, be equally misleading. The public opinion of England, itself necessarily unacquainted with Indian affairs, can only follow the promptings of those who take most pains to influence it, and these will generally be such as have some private interest to serve. It is, therefore, your petitioners submit, of the utmost importance that any Council which may form a part of the Home Government of India should derive sufficient weight from its constitution, and from the relation it occupies to the Minister, to be a substantial barrier against those inroads of self-interest and ignorance in this country from which the Government of India has hitherto been comparatively free, but against which it would be too much to expect that Parliament should of itself afford a sufficient protection.

Importance  
of Council

That your petitioners cannot well conceive a worse form of government for India than a Minister with a Council whom he should be at liberty to consult or not at his pleasure, or whose advice he should be able to disregard, without giving his reasons in writing, and in a manner likely to carry conviction. Such an arrangement, your petitioners submit, would be really liable to the objections, in their opinion, erroneously urged against the present system. Your petitioners respectfully represent that any body of persons associated with the Minister, which is not a check, will be a

screen. Unless the Council is so constituted as to be personally independent of the Minister, unless it feels itself responsible for recording an opinion on every Indian subject, and pressing that opinion on the Minister, whether it is agreeable to him or not; and unless the Minister, when he overrules their opinion, is bound to record his reasons, their existence will only serve to weaken his responsibilities and to give the colourable sanction of prudence and experience to measures in the framing of which those qualities have had no share.

That it would be vain to expect that a new Council could have as much moral influence, and power of asserting its opinion with effect, as the Court of Directors. A new body can no more succeed to the feelings and authority which their antiquity and historical antecedents give to the East India Company, than a legislature under a new name, sitting in Westminster, would have the moral ascendancy of the Houses of Lords and Commons. One of the most important elements of usefulness will thus be necessarily wanting in any newly constituted Indian Council, as compared with the present.

No new Council could be as effective as Court of Directors

That your petitioners find it difficult to conceive that the same independence in judgment and act, which characterizes the Court of Directors, will be found in any Council all of whose Members are nominated by the Crown. Owing their nomination to the same authority, many of them probably to the same individual Minister, whom they are appointed to check, and looking to him alone for their reappointment, their desire of recommending themselves to him and their unwillingness to risk his displeasure by any serious resistance to his wishes, will be motives too strong not to be in danger of exercising a powerful and injurious influence over their conduct. Nor are your petitioners aware of any mode in which that injurious influence could be guarded against, except by conferring the appointments, like those of the judges, during good behaviour; which, by rendering it impossible to

Council may be subservient to Minister

correct an error once committed, would be seriously objectionable.

That your petitioners are equally unable to see how, if the controlling body is nominated by the Minister, that happy independence of Parliamentary and party influence, which has hitherto distinguished the administration of India and the appointment to situations of trust and importance in that country, can be expected to continue. Your petitioners believe that in no Government known to history have appointments to offices, and especially to high offices, been so rarely bestowed on any other considerations than those of personal fitness. This characteristic, but for which in all probability India would long since have been lost to this country, is, your petitioners conceive, entirely owing to the circumstance that the dispensers of patronage have been persons unconnected with party, and under no necessity of conciliating Parliamentary support; that, consequently, the appointments to offices in India have been, as a rule, left to the unbiassed judgment of the local authorities; while the nominations to the civil and military services have been generally bestowed on the middle classes, irrespective of political considerations, and, in a large proportion, on the relatives of persons who had distinguished themselves by their services in India.

Principle of  
appointment  
to high posts  
in India

That your petitioners, therefore, think it essential that at least a majority of the Council which assists the Minister for India with its advice, should hold their seats independently of his appointment.

Relations  
between pro-  
posed Coun-  
cil and  
Minister

That it is, in the opinion of your petitioners, no less necessary that the order of the transaction of business should be such as to make the participation of the Council in the administration of India a substantial one. That to this end, it is, in the opinion of your petitioners, indispensable that the dispatches to India should not be prepared by the Minister and laid before the Council, but should be prepared by the Council and submitted to the Minister. This would be in accordance with the natural and obvious principle that persons chosen for their knowledge of a subject should

suggest the mode of dealing with it, instead of merely giving their opinion on suggestions coming from elsewhere. This is also the only mode in which the Members of the Council can feel themselves sufficiently important or sufficiently responsible to secure their applying their minds to the subjects before them. It is almost unnecessary for your petitioners to observe, that the mind is called into far more vigorous action by being required to propose than by being merely called on to assent. The Minister has necessarily the ultimate decision. If he has also the initiative, he has all the powers which are of any practical moment. A body, whose only recognized function was to find fault, would speedily let that function fall into desuetude. They would feel that their co-operation in conducting the government of India was not really desired ; that they were only felt as a clog on the wheels of business. Their criticism on what had been decided without their being collectively consulted would be felt as importunate, as a mere delay and impediment ; and their office would probably be seldom sought by those who were willing to allow its most important duties to become nominal.

Relations  
between  
Council and  
subordinate  
officers

That with the duty of preparing the dispatches to India, would naturally be combined the nomination and control of the Home establishments. This your petitioners consider absolutely essential to the utility of the Council. If the officers through whom they work are in direct dependence upon an authority higher than theirs, all matters of importance will in reality be settled between the Minister and the subordinates, passing over the Council altogether.

Composition  
of proposed  
Council

That a third consideration, to which your petitioners attach great importance, is, that the number of the Council should not be too restricted. India is so wide a field, that a practical acquaintance with every part of its affairs cannot be found combined in any small number of individuals. The Council ought to contain men of general experience and knowledge of the world; also men specially qualified by financial and revenue experience, by judicial experience, diplomatic experi-

ence, military experience. It ought to contain persons conversant with the varied social relations and varied institutions of Bengal, Madras, Bombay, the North-Western Provinces, the Punjab, and the native states. Even the present Court of Directors, reduced as it is in numbers by the Act of 1853, does not contain all the varieties of knowledge and experience desirable in such a body. Neither, your petitioners submit, would it be safe to limit the number to that which would be strictly sufficient, supposing all the appointments to be the best possible. A certain margin should be allowed for failures, which, even with the most conscientious selection, will sometimes occur. Your petitioners, moreover, cannot overlook the possibility that, if the nomination takes place by Ministers at the head of a political party, it will not always be made with exclusive reference to personal qualifications; and it is indispensable to provide that such errors or faults in the nominating authority, so long as they are only occasional, shall not seriously impair the efficiency of the body.

That while these considerations plead strongly for a body not less numerous than the present, even if only regarded as advisers of the Minister, their other office, as a check on the Minister, forms, your petitioners submit, a no less forcible objection to any considerable reduction of the present number. A body of six or eight will not be equal to one of eighteen, in that feeling of independent self-reliance which is necessary to induce a public body to press its opinion on a Minister to whom that opinion is unacceptable. However unobjectionably in other respects so small a body may be constituted, reluctance to give offence will be likely, unless in extreme cases, to be a stronger habitual inducement in their minds than the desire to stand up for their convictions.

That if, in the opinion of your [Lordships'] Honourable House, a body can be constituted which unites the above enumerated requisites of good government in a greater degree than the Court of Directors, your petitioners have only to express their humble hope

Size of Council should not be small

Why powers of Court of Directors should be continued

~~that your petitioners for that purpose may be successful. But if, in constructing the constitution of a good system of Home government for India, your petitioners have in fact enumerated the qualities possessed by the present system, then your petitioners pray that your [Lordships'] Honourable House will continue the existing powers of the Court of Directors.~~

Question of  
Double  
Government

That your petitioners are aware that the present Home Government of India is reproached with being a double Government; and that any arrangement by which an independent check is provided to the discretion of the Minister will be liable to a similar reproach. But they conceive that this accusation originates in an entire misconception of the functions devolving on the Home Government of India, and in the application to it of the principles applicable to purely executive departments. The Executive Government of India is, and must be, seated in India itself.

Functions of  
Directors

The Court of Directors is not so much an executive as a deliberative body. Its principal function, and that of the Home Government generally, is not to direct the details of administration, but to scrutinize and revise the past acts of the Indian Government; to lay down principles, and issue general instructions for their future guidance, and to give or refuse sanction to great political measures, which are referred home for approval. These duties are more analogous to the functions of Parliament, than to those of an Executive Board; and it might almost as well be said that Parliament, as that the Government of India, should be constituted on the principles applicable to Executive Boards. It is considered an excellence, not a defect, in the constitution of Parliament, to be not merely a double but a triple Government. An executive authority, your petitioners submit, may often with advantage be single because promptitude is its first requisite. But the function of passing a deliberate opinion on past measures, and laying down principles of future policy, is a business which, in the estimation of your petitioners, admits of, and requires the concurrence of more judgments than one. It is no defect

in such a way to be double, and not single; especially when it can only be made so by cutting off that branch of it which by previous training is always the best prepared, and often the only one which is prepared at all, for its peculiar duty.

That your petitioners have heard it asserted that, in consequence of what is called the double Government, the Indian authorities are less responsible to Parliament and the nation, than other departments of the Government of the empire, since it is impossible to know on which of the two branches of Home Government the responsibility ought to rest. Your petitioners fearlessly affirm, that this impression is not only groundless, but the very reverse of the truth. The Home Government of India is not less, but more responsible, than any other branch of the administration of the State; inasmuch as the President of the Board of Commissioners, who is the Minister for India, is as completely responsible as any other of Her Majesty's ministers, and in addition, his advisers also are responsible. It is always certain, in the case of India, that the President of the Board of Commissioners must have either commanded or sanctioned all that has been done. No more than this, your petitioners submit, can be known in the case of the head of any department of Her Majesty's Government. For it is not, nor can it rationally be supposed, that any Minister of the Crown is without trusted advisers; and the Minister for India must, for obvious reasons, be more dependent than any other of Her Majesty's Ministers upon the advice of persons whose lives have been devoted to the subject on which their advice has been given. But in the case of India, such advisers are assigned to him by the constitution of the Government, and they are as much responsible for what they advise as he for what he ordains; while in other departments the Minister's only official advisers are the subordinates in his office—men often of great skill and experience, but not in the public eye; often unknown to the public even by name; official secrets precludes the possibility of ascertaining what advice they give,

Responsibility for Indian administration rests on President of Board of Control

and they are responsible only to the Minister himself. By what application of terms this can be called responsible government, and the joint government of your petitioners and the India Board an irresponsible government, your petitioners think it unnecessary to ask.

Question of  
Indian army

That, without knowing the plan on which Her Majesty's Ministers contemplate the transfer to the Crown of the servants of the Company, your petitioners find themselves unable to approach the delicate question of the Indian army, further than to point out that the high military qualities of the officers of that army have unquestionably sprung in a great degree from its being a principal and substantive army, holding Her Majesty's commissions and enjoying equal ranks with Her Majesty's officers and your petitioners would earnestly deprecate any change in that position.

Company  
invites  
enquiry into  
every de-  
partment of  
Indian ad-  
ministration

That your petitioners, having regard to all these considerations, humbly pray your Honourable House that you will not give your sanction to any change in the constitution of the Indian Government during the continuance of the present unhappy disturbances, nor without a full previous inquiry into the operations of the present system. And your petitioners further pray that this inquiry may extend to every department of Indian administration. Such an inquiry your petitioners respectfully claim, not only as a matter of justice to themselves, but because, when, for the first time in this century, the thoughts of every public man in this country are fixed on India, an enquiry would be more thorough, and its results would carry much more instruction to the mind of Parliament and of the country, than at any preceding period.

### 58. THE QUEEN'S PROCLAMATION,<sup>1</sup> 1858. (November 1, 1858)

Whereas for divers weighty reasons, we have resolved, by and with the Advice and consent of the

<sup>1</sup> This Proclamation was drafted, at the Queen's desire, by the Prime Minister, Lord Derby.



Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon Ourselves the Government of the Territories in India heretofore administered in trust for us by the Honourable East India Company :

Now, therefore, We do by these Presents notify and declare that, by the Advice and consent aforesaid, we have taken upon Ourselves the said Government

Assumption  
of govern-  
ment of  
India

And we do hereby constitute and appoint Viscount Canning, to be Our first Viceroy and Governor-General in and over Our said Territories, and to administer the Government thereof in Our name, and generally to act in Our name and on Our behalf, subject to such Orders and Regulations as he shall, from time to time, receive from Us through One of Our Principal Secretaries of State :

'Viceroy'

And We do hereby confirm in their several Offices, Civil and Military, all Persons now employed in the Service of the Honourable East India Company, subject to Our future pleasure, and to such Laws and Regulations as may hereafter be enacted.

Company's  
servants

We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted, and will be scrupulously maintained ; and We look for the like observance on their part.

Treaties  
with  
Indian  
Princes

We desire no extension of our present territorial Possessions ; and while We will permit no aggression upon Our Dominions or Our Rights to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the Rights, Dignity, and Honour of Native Princes as Our own ;.

Territorial  
extension  
not  
wanted

\* \* \* \*

And it is Our further Will that, so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to Offices in Our Service, the Duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.

Removal  
of colour  
bar

## APPENDIX A

### Documents on Indian States

#### 59. SUBSIDIARY TREATY WITH MYSORE, 1799.

(July 8, 1799)

*Article 2.* The Honourable the East India Company Bahaudur agrees to maintain, and His Highness Maharajah Mysore Kistna Rajah Oodiaver Bahaudur agrees to receive, a military force for the defence and security of His Highness's dominions. In consideration of which protection His Highness engages to pay the annual sum of seven lacs of star pagodas to the said East India Company

\* \* \* \*

*Article 1.* And whereas it is indispensably necessary that effectual and lasting security should be provided against any failure in the funds destined to defray the expense of maintaining the

1 "In framing this engagement, it was my determination to establish the most unqualified community of interests between the Government of Mysore and the Company, and to render the Rajah's northern frontier, in effect, a powerful line of our defence. With this view, I have engaged to undertake the protection of this country, in consideration of an annual subsidy of seven lacs of star pagodas; but recollecting the embarrassments which have arisen to all parties concerned under the double governments and conflicting authorities unfortunately established in Oudh, the Carnatic and Tanjore, I resolved to reserve to the Company the most extensive and indisputable powers of interposition in the internal affairs of Mysore, as well as an unlimited right of assuming the direct management of the country' (whenever such a step might appear necessary for the security of the funds destined to the subsidy), and of requiring extraordinary aid beyond the amount of the fixed subsidy, either in time of war, or of preparations for hostility. Under this arrangement I trust that I shall be enabled to command the whole resources of the Rajah's territory, to improve its cultivation, to extend its commerce, and to secure the welfare of its inhabitants. It appeared to me a more candid and liberal, as well as a more wise policy, to apprise the Rajah distinctly at the moment of his accession, of the exact nature of his dependence on the Company, than to leave any matter for future doubt or discussion."—Lord Wellesley to the Court of Directors, August 3, 1799.

Case of Oudh, the Carnatic and Tanjore

British right to control internal affairs of Mysore

No room for future misunderstanding

military force. . . , it is hereby stipulated and agreed between the contracting parties, that whenever the Governnor-General in Council shall have reason to apprehend such failure in the funds so destined, the said Governor-General in Council shall be at liberty, and shall have full power and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of the revenues, or for the better ordering of any other branch and department of the Government of Mysore ; or to assume and bring under the direct management of the servants of the said Company Bahaudur, such part or parts of the territorial possessions of His Highness as shall appear to him, the said Governor-General in Council, necessary to render the said funds efficient and available either in time of peace or war.

British right to interfere in internal affairs to secure regular payment of money for maintaining the subsidiary force

*Article 5.* And it is hereby further agreed, that whenever the said Governor-General in Council shall signify to the said Maharajah that it is become necessary to carry into effect the provisions of the 4th Article, His said Highness shall immediately issue orders to his Aumils, or other officers, either for carrying into effect the said regulations accordingly to the tenor of the 4th Article, or for placing the territories required under the exclusive authority and control of the English Company Bahaudur ; and in case His Highness shall not issue such orders within ten days from the time when the application shall have been formally made to him, then the said Governor-General in Council shall be at liberty to issue orders by his own authority. . . .

*Article 6.* His Highness . . . engages . . . that he will carefully abstain from any interference in the affairs of any state in alliance with the said English Company Bahaudur, or of any state whatever ; and for securing the object of this stipulation it is further stipulated, and agreed, that no communication or correspondence with any foreign state whatever shall be holden by His said Highness without the previous

Mysore not to have relations with any other State

knowledge and sanction of the said English Company Bahaudur.

\* \* \* \*

*Article 14.* His Highness hereby promises to pay at all times the utmost attention to such advice as the Company's Government shall occasionally judge it necessary to offer to him, with a view to the economy of his finances, the better collection of his revenues, the administration of justice, the extension of commerce, the encouragement of trade, agriculture, and industry, or any other objects connected with the advancement of His Highness's interests, the happiness of his people, and the mutual welfare of both states<sup>1</sup>.

British advice to be accepted by Mysore

## 60. LORD WELLESLEY'S TREATIES WITH HYDERABAD.

### I. Treaty, September 1, 1798.

*Article 1.* Such parts of the letter from Ea Cornwallis to his Highness the Nizam, dated the 7th July, 1789, and which has always been considered in the light of a Treaty, as relate to the stationing of troops with His Highness<sup>2</sup> are to be considered as in full force; that is, the services of the new permanent subsidiary force are to be regulated precisely by the some restrictive clauses that operate on the present detachment

\* \* \* \*

*Article 5.* The said subsidiary force will at all times be ready to execute services of importance, such as the

<sup>1</sup> Article 9 of Lord Wellesley's treaty with Travancore (1805) is couched in the same language.

<sup>2</sup> "... I agree that, in the sixth Article of the Treaty (of 1768 between the Company and the Nizam) the words 'whenever the situation of affairs will allow such a body of troops to march into the Deccan', shall be understood to mean, that the force engaged for by this Article, viz., two battalions of sepoys and six pieces of cannon, manned by Europeans, shall be granted whenever Your Highness shall apply for it, making only one exception, that it is not to be employed against any power in alliance with the Company. ..."—Lord Cornwallis to the Nizam, July 7, 1793.

protection of the person of His Highness, his heirs and successors, from race to race, and overawing and chastising all rebels or excitors of disturbance in the dominions of this State; but it is not to be employed on trifling occasions, nor, like Sebundy, to be stationed in the country to collect the revenues thereof.

Subsidiary force may be used for suppressing internal rebellion

*Article 6.* And His Highness hereby engages for himself, his heirs and successors, that no Frenchman whatever shall ever hereafter be entertained in his own service, or in that of any of his Chiefs or dependants, nor be suffered to remain in any part of His Highness's dominions; nor shall any Europeans whatever be admitted into the service of this State, nor be permitted to remain within its territories without the knowledge and consent of the Company's Government.

Exclusion of Europeans

\* \* \* \* \*

*Article 8.* in the event of differences arising (between the Nizam and the Peshwa), whatever adjustment the English Government, weighing things in the scale of truth and justice, may determine upon shall, without hesitation or objection, meet with full approbation and acquiescence (of the Nizam).

Nizam's relations with the Peshwa to be controlled by the Company

## II. Treaty, October 12, 1800.

*Article 1.* The peace, union, and friendship so long subsisting between the two States shall be perpetual; the friends and enemies of either shall be friends and enemies of both. ...

*Article 2.*.....the British Government will never permit any power or State whatever to commit with impunity any act of unprovoked hostility or aggression against the rights or territories of His Highness the Nizam, but will at all times maintain and defend the same, in the same manner as the rights and territories of the Honourable Company are now maintained and defended.

Company assumes responsibility for defence of Nizam's territory

\* \* \* \* \*

*Article 15.*.....His Highness the Nizam engages, neither to commence nor to pursue in future any

**Company to control Nizam's foreign relations** negotiations with any other power whatever without giving previous notice and entering into mutual consultation with the Honourable East India Company's Government; and the Honourable Company's Government on their part hereby declare that they have no manner of concern with any of His Highness's children, relations, subjects, or servants with respect to whom His Highness is absolute.

**Nizam's absolute control over his subjects**

*Article 16.* in the event of any differences arising (between the Nizam and any other Power), whatever adjustment of them the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with full approbation and acquiescence (of the Nizam).

## 61. LORD WELLESLEY'S TREATY WITH SINDHIA, 1804.

(February 27, 1804)

**Subsidiary force** *Article 3.* the Maharajah (Daulat Rao Sindhia) agrees to receive, and the Honourable East India Company agrees to furnish, a subsidiary force

This force is to be stationed at such place near the frontier of Dowlut Rao Sindhia as may hereafter be deemed most eligible by the British Government.

\* \* \* \*

**Subsidiary force may be employed for suppressing internal rebellion** *Article 6.* The subsidiary force will, at all times, be ready, on the requisition of the Maharajah, to execute services of importance, such as the care of the person of the Maharajah, his heirs and successors, the protection of the country from attack and invasion, the overawing and chastisement of rebels or excitors of disturbance in the Maharajah's dominions; but it is not to be employed on trifling occasions.

\* \* \* \*

**Company to control Sindhia's foreign relations** *Article 8.* . . . the Maharajah engages neither to commence nor to pursue in future any negotiation with any principal States or Powers, without giving previous notice and entering into mutual consultation with the Honourable East India Company's Govern-

ment : and the Honourable Company's Government, on their part, declare that they will have no manner of concern with any of the Maharajah's relations, dependants, military chiefs, or servants, with respect to whom the Maharajah is absolute : and that they will, on no occasion, ever afford encouragement, support, or protection to any of the Maharajah's relations, dependants, chiefs, or servants, who may eventually act in opposition to the Maharajah's authority, but, on the contrary, at the requisition of the Maharajah they will aid and assist to punish and reduce all such offenders to obedience : and it is further agreed that no officer of the Honourable Company shall ever interfere in the internal affairs of the Maharajah's Government.

Sindhia's 'absolute' control over his subjects

Company to help Sindhia in suppressing internal rebellions

No British interference in Sindhia's internal administration

*Article 9.* the Maharajah Dowlut Rao Sindhia engages never to commit any act of hostility or aggression against any State or Chief in alliance with the Honourable Company, or against any other principal State or Power ; and in the event of differences arising, whatever adjustment the Company's Government, weighing matters in the scale of truth and justice, may determine, shall meet with his full approbation and acquiescence.

Company to adjust differences between Sindhia and other Powers

\* \* \* \*

*Article 14.* neither of the two contracting parties shall enter into alliance, or have any concern with the tributaries or chiefs of the other ; and, in order to support the independent authority of both Governments, it is agreed and declared, that hereafter neither of the contracting parties will give protection or countenance to the rebellious tributaries and subjects of the other, but they will use their utmost endeavours for the apprehension of such rebels.

Each party to refrain from interfering with tributaries of the other

## 62. LORD WELLESLEY'S TREATY WITH BHARATPUR, 1805. (April 17, 1805)

*Article 1.* A firm and permanent friendship is established between the Honourable the East India

Company and Maharajah Sewaee Bahadoor, Runjeet Sing Bahadoor, and between their heirs and successors.

*Article 2.* As friendship has been established between the two States, the friends and enemies of one of the parties shall be considered the friends and enemies of both, and an adherence to this condition shall be constantly observed by both States.

\* \* \* \*

*Article 6.* In the event of any enemy evincing a disposition to attack the dominions of the Honourable Company, Maharajah Runjeet Sing binds himself to assist, to the utmost of his power, in expelling the enemy and in no measure to hold any correspondence or be in any way connected with, or assisting to, the enemies of the Honourable Company.

*Article 7.* As by the second Article of the present Treaty, the Honourable Company becomes guarantee to Maharajah Runjeet Sing for the security of the country against external enemies, the Maharajah hereby agrees, that if any misunderstanding should arise between him and the chief of any other chieftain, the Maharajah will, in the first instance, submit the cause of dispute to the Honourable Company's Government, that the Government may endeavour to settle it amicably, agreeably to justice and ancient usage. If, from the obstinacy of the opposite party, no amicable terms can be settled, then Maharajah Runjeet Sing may demand aid from the Company's Government. In the event above stated in this Article it will be granted.

*Article 8.* The Maharajah shall not in future entertain in his service, nor give admission to any English or French subjects, or any other person from among the inhabitants of Europe, without the sanction of the Honourable Company's Government; and the Honourable Company also agrees not to give admission to any of the Maharajah's relations or servants without his consent.



### 63. ARTHUR WELLESLEY<sup>1</sup> ON LORD WELLESLEY'S RELATIONS WITH INDIAN STATES, 1806.

#### 1. Weakness of the system inherited by Lord Wellesley.

Another circumstance which embarrassed Government in India at all times, and was a considerable source of embarrassment at the period under consideration, was the nature and state of the alliances between the British Government and its dependent and tributary states.

These alliances had always been formed in a moment of extreme weakness, and generally after the Native and dependent State had been conquered. The principal stipulation was uniformly protection by the British Government, in consideration of subsidy to be paid by the Native State, and in other respects the Native State was declared or was considered to be independent in the management of all its internal concerns.

Nature of  
British  
alliances  
with Indian  
States

The Native States having in every instance contracted these alliances in a moment of weakness, in which, of course, all the powers of their Governments were paralysed, they have invariably been under the necessity of calling for the assistance of the British protecting Government for the support of their authority in the management of their internal concerns.

\* \* \* \*

The foundation and the instrument of all power there (*i.e.*, in Indian States) is the sword; and when these alliances have been formed, the sword, or in other words, the army of the East India Company, became the only support and the only efficient instrument of authority of the protected Native states.

Allied States  
dependent  
on British  
military  
support

This position of affairs, which was the result of the principle of government long established in the East, and of the weakness of the Native State, was attended by a stipulation in some cases, of an under-

<sup>1</sup> Duke of Wellington.

standing in others, that the Native State should be *independent* in all the operations of its internal government ; and at the very moment in which this stipulation was made, the interference of the British Government was required, and all the internal concerns of the Native State submitted to its judgment, in order that its agents might see whether the cases in which its interference was called for were of a nature to justify it.

British  
interference  
in internal  
affairs  
of allied  
States

Here, then, the door was necessarily opened to the interference of the British Government in every concern ; and the result was increased weakness in the Native State, jealousy of this interference, and disunion bordering upon treachery.

## II. Treaty with Mysore, 1799.

The principal and all the centre part of the territories of Tipu were given to a descendant of the ancient Rajas of Mysore, in whose person a state was formed under the immediate influence and protection of the British Government. This state was connected by a treaty of alliance with the Company . . . . . As alliances of this description, by conferring a nominal independence on the Princes connected by them with the Company, had been found in other instances to be attended with many inconveniences, to render necessary a constant interference by the protecting Government in the internal affairs of the Native subordinate state, and to occasion internal weakness, jealousy of the protecting power, and a waste and embarrassment of the resources of the Government, it was thought best, in the treaty of alliance with the Government of Mysore, to provide for the interference of the British Government in all its concerns when such interference might be necessary ; and the state in which this Government is found to be at this moment, the cordial and intimate union which exists between the Government of Mysore and the British authorities, and the important strength and real assistance which it has afforded to the British Government in all its recent difficulties, afford the

Speciality  
of the  
treaty :  
provision  
for British  
interference  
in internal  
affairs

Justifica-  
tion of  
the treaty

strongest proofs of the wisdom of this stipulation of the treaty.

### III. Annexation of the Carnatic.

One of the great evils in this alliance (between the Company and the Nawab of Arcot), as in all those of this description which had been formed in India, was that it provided that the Company should not interfere in the internal concerns of the Nawab's Government, at the same time that the interference of the Company in every possible case was absolutely and essentially necessary for the support of the Native Government, and was practised on every occasion.

British interference in internal affairs

Another evil which affected this, as well as every alliance of the same description, was that the Nawab was obliged to borrow money, at large interest, to make his payments at the stipulated periods

Nawab's debts

\* \* \* \*

Besides these evils, there was a manifest indifference or rather disaffection, in the Nawab Omdat ul Omra, himself, to the cause of the British Government and its allies, the meaning of which was not discovered till Seringapatam was taken, and the papers of Tipu had fallen into the hands of the British Government. Among them was found all the written communications which had been carried on between the Nawab Mahomed Ali and the Nawab Omdat ul Omra, his son, and Hyder Ali and Tipu Sultan, without the knowledge of the Company's Government.

Nawabs guilty of treachery to the Company

The fact of the existence of the correspondence alone was a breach of the treaties by which the Nawabs of the Carnatic had been allied to the British Government

## 64. LORD HASTINGS ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES.

### 1. Private Journal, February 1, 1814.

In our treaties with them (Indian Princes) we recognise them as independent sovereigns. Then we

Powers of  
Residents  
in Indian  
States

send a Resident to their Courts. Instead of acting in the character of ambassador, he assumes the functions of a dictator; interferes in all their private concerns; countenances refractory subjects against them, and makes the most ostentatious exhibition of this exercise of authority<sup>1</sup>. To secure himself the support of our Government, he urges some interest which, under the colour thrown upon it by him, is strenuously taken up by our Council; and the Government identifies itself with the Resident not only on the single point but on the whole tenor of his conduct.

## II. Letter to Metcalfe, Resident at Hyderabad.<sup>2</sup>

Distinction  
between  
feudatories  
and allies

2. . . . you say that you propose 'our interference in the Nizam's affairs to be not merely right, but also a duty, arising out of our supremacy in India which imposed on us the obligation of maintaining the tranquillity of all countries connected with us, and consequently of protecting the people from oppressions, as no less necessary than the guaranteeing of their rulers against revolution.' The assumption of our possessing a universal supremacy in India involving such rights as you have described is a mistake. Over States which have by particular engagement rendered themselves professedly feudatory, the British Government does, no doubt, exercise supremacy; but it never has been claimed, and certainly never has been acknowledged, in the case of Native Powers standing within the denomination of allies. Although a virtual supremacy may undoubtedly be said to exist in the British Government from the inability of other States to contend with its strength, the making such a superiority a principle singly sufficient for any exertion of our will, would be to misapply and to pervert it to tyrannic purpose.

<sup>1</sup> Colonel Macaulay wrote to the Raja of Cochin, "The Resident will be glad to learn that on his arrival near Cochin the Raja will find it convenient to wait upon him." (*Cochin State Manual*, p. 138).

<sup>2</sup> See Panikkar, *The Evolution of British Policy Towards Indian States*, pp. 52-56. For Metcalfe's work in Hyderabad, see Thompson, *Lord Metcalfe*, pp. 189-231.

3. . . . . you observe, 'the refuge of a people intolerably vexed, is in emigration or insurrection; and as we ensure the Nizam's Government against rebellion, it seems to be incumbent on us to save his subjects from grievous oppressions.' The argument of supremacy having been set aside, nothing but the tenure of some special engagement could render us liable to the call or allot to us the title for such interposition

Intervention in internal affairs not justified, except by special engagement

4. Paragraphs 4 and 5 (of your letter) plead necessity for our intervention, because the Nizam does not rule his subjects with equity and prudence. The fact of maladministration is unquestionable and must be deplored. Does that, however, decide the mode in which alteration is to be effected? Where is our right to determine that the amount of the evil is such as to demand our taking the remedy into our hands?

Mal-administration is no justification for intervention

Were such a pretence allowable, a powerful State should never want a colour for subjugating a weak neighbour. The consequence is so obvious that no principle in the law of nations leaves room for acting on such a presumption. It is admitted, that if convulsions rage so violently in one State as clearly to threaten the excitation of ferment in a bordering one, the latter may be justified in reducing to order the nation by which its tranquillity was menaced. This, however, is an extreme case, at the same time that it is of a description strictly defined. No analogy exists between indisputable exigency and an asserted convenience, where vague arbitrary charges, if tolerated as a ground of procedure, would furnish ready pretext for the foulest usurpations.

### III. Private Journal, February 6, 1816.

Our object ought to be to render the British Government paramount in effect, if not declaredly so. We should hold the other States as vassals, in substance, though not in name; not precisely as they stood in the Moghul Government but possessed of perfect internal sovereignty and only bound to repay the guarantee and protection of their possessions by the

States should enjoy 'perfect internal sovereignty'

British Government with the pledge of two great feudal dues.

Duties of  
Indian States  
towards the  
Company

First, they should support it with their forces in any call. Second, they should submit their mutual difference to the head of the confederacy (our Government) without attacking each other's territories. A few subordinate stipulations on our part with immunities secured in return to the other side (especially with regard to the succession) would render the arrangement ample without complication or undue latitude. Were this made palatable to a few states, as perhaps it easily might, the abrogation of treaties with the Powers who refuse to submit to the arrangement would soon work upon their apprehensions in a way that would bring them at last within the pale of the compact. The completion of such a system, which must include the extinction of any pretension to pre-eminence in the court of Delhi,<sup>1</sup> demands time and favourable coincidences.

## 65. LORD HASTINGS' TREATY WITH HOLKAR, 1818.

(January 6, 1818)

*Article 1.* Peace being established with the Maharajah Mulhar Raw Holkar, the Company's Government agree that it will not permit any state or any freebooter to be unpunished that shall commit any outrage or hostility against the territories of Maharajah and the British Government will at all times extend the same protection to the territories of Maharajah as to its own.

<sup>1</sup> Elsewhere Lord Hastings observes, "The House of Timur had been put so much out of sight, that all habit of advertg to it was failing fast in India; and nothing has kept the floating notion of a duty owed to the imperial family but our gratuitous and persevering exhibition of their pretensions—an exhibition attended with much servile obsequance, in the etiquette imposed upon us by the ceremonial of the court. I have thence held it right to discountenance any pretension of the sort, either as it applies to us or to any of the native princes."

*Article 9.* Maharajah engages never to commit any act of hostility or aggression against any of the Company's allies or dependants or against any other Power or State whatever. In the event of differences arising whatever adjustment the Company's Government weighing matters in the scale of truth and justice may determine, shall have the Maharajah's entire acquiescence. The Maharajah agrees not to send or receive vakeels from any other state or to have communication with any other state except with the knowledge and consent of the British Resident.

British control over foreign relations

*Article 10.* The British Government hereby declares that it has no manner of concern with any of the Maharajah's children, relations, dependants, subjects, or servants, with respect to whom the Maharajah is absolute.

Holkar's 'absolute' control over his subjects

\* \* \* \*

*Article 13.* Muhar Raw Holkar engages never to entertain in his service Europeans or Americans of any description without the knowledge and consent of the British Government.

Exclusion of Europeans

*Article 14.* an accredited Minister from the British Government shall reside with the Maharajah, and the latter shall be at liberty to send a vakeel to the Most Noble the Governor-General.

Resident

## 66. LORD HASTINGS' TREATY WITH BHOPAL, 1818.

(February 26, 1818)

*Article 1.* There shall be perpetual friendship, alliance and unity of interests between the Honourable the East India Company and the Nawab of Bhopal, his heirs and successors; and the friends and enemies of one party shall be the friends and enemies of both.

Perpetual alliance

*Article 2.* The British Government engages to guarantee and protect the principality and territory of Bhopal against all enemies.

British protection

*Article 3.* The Nawab of Bhopal and his heirs and successors will act in subordinate co-operation with the British Government and acknowledge its supremacy and

British control over foreign relations

will not have any connection with other Chiefs and States.

*Article 4.* The Nawab and his heirs and successors will not enter into negotiation with any Chief or State without the knowledge and sanction of the British Government.

*Article 5.* The Nawab and his heirs and successors will not commit aggression on any one. If by accident disputes arise with any one, they shall be submitted to the arbitration and award of the British Government.

*Article 6.* Whenever required and when necessary, the whole of the Bhopal forces shall join the British army excepting such a portion as may be requisite for the internal administration of the country.

\* \* \* \*

*Article 9.* The Nawab and his heirs and successors shall remain absolute rulers of their country, and the jurisdiction of the British Government shall not in any manner be introduced into that principality.

## 67. LORD HASTINGS' TREATY WITH MEWAR,<sup>1</sup> 1818.

(January 13, 1818)

*Article 1.* There shall be perpetual friendship, alliance, and unity of interests between the two states from generation to generation, and the friends and enemies of one shall be friends and enemies of both.

*Article 2.* The British Government engages to protect the principality and territory of Oudeypore.

*Article 3.* The Maharana of Oudeypore will always act in subordinate co-operation with the British Government, and acknowledge its supremacy, and will not have any connection with other Chiefs or States.

*Article 4.* The Maharana of Oudeypore will not enter into any negotiation with any Chief or State

<sup>1</sup> For the historical background, see A. C. Banerjee, *Rajput Studies*, pp. 161-187. See also *Proceedings of the Indian Historical Records Commission*, 1944.



without the knowledge and consent of the British Government; but his usual amicable correspondence with friends and relations will continue.

British control over foreign relations

*Article 5.* The Maharana of Oudeypore will not commit aggressions upon any one; and if by accident a dispute arise with any one, it shall be submitted to the arbitration and award of the British Government.

*Article 6.* One-fourth of the revenues of the actual territory of Oudeypore shall be paid annually to the British Government as tribute for five years; and after that term three-eighths in perpetuity.....

Tribute

\* \* \* \*

*Article 8.* The troops of the State of Oudeypore shall be furnished according to its means, at the requisition of the British Government.

Military service

*Article 9.* The Maharana of Oudeypore shall always be absolute ruler of his own country, and the British jurisdiction shall not be introduced into that principality.<sup>1</sup>

No British interference in internal affairs

## 68. LORD AMHERST'S TREATY WITH SIROHI, 1823.

(September 11, 1823)

*Article 1.* The British Government consents to take under its protection, and to receive amongst the number of its dependant and tributary States, the Chiefship and territory of Sirohi.

British supremacy

*Article 2.* The Regent Rao Sheo Sing on his own behalf, and in the name of the Rao, his heirs and successors, hereby acknowledges the supremacy of the British Government, and engages to discharge with fidelity the duties of allegiance, and to observe punctually the other conditions detailed in this enagement.

*Article 3.* The Rao of Sirohi will not form or maintain connections with any other States or Chiefs. He will not commit aggression on any one. If by accident disputes arise with a neighbour, they shall be

<sup>1</sup> Similar treaties were concluded by Lord Hastings with other Rajput States—Jaipur, Jodhpur, Bikaner, Kotah, Bundi, etc.

submitted to the arbitration and decision of the British Government. That Government undertakes also to arbitrate and adjust any claims which may be possessed or advanced by other states upon Sirohi or *vice versa*, whether for lands, service, money, contributions, or otherwise.

British interference in internal affairs  
*Article 4.* The jurisdiction of the British Government shall not be introduced into the territories of Sirohi, but the rulers thereof shall at all times attend to the advice of the Officer of the British Government in the administration of their affairs, and act in conformity thereto.<sup>1</sup>

British advice to be followed  
*Article 5.* the Regent hereby expressly and specially engages to follow the counsel of the British authority in all his proceedings for the restoration of the prosperity of the country and the introduction of good order and regularity

*Article 6.* If any of the sirdars and thakoors of Sirohi shall commit offences or be guilty of disobedience, the same shall be punished by fine or confiscation of lands, or such other infliction as may be in each case determined on, in concert and concurrence with the Officers of the British Government.

\* \* \* \*

Tribute  
*Article 8.* The State of Sirohi shall pay such tribute to the British Government to defray the expenses incurred by undertaking its protection, as may be determined on

Collection of customs  
*Article 9.* it shall be competent to the Officers of the British Government to recommend such rates of transit duties and regulations for the collection of customs within the limits of the Sirohi territory as may be judged expedient, and to interfere from time to time to enforce or amend the same.

<sup>1</sup> Article 5 of Lord Hastings's treaty with Dungarpur, February 13, 1819: "The affairs of the principality of Dungarpore shall be settled according to the advice of the British Government, in which the British Government will pay all practicable attention to the will of the Maha Rawul." Article 5 of Lord Hastings' treaty with Baniwara (February 13, 1819) is exactly similar.

## 69. LORD ELLENBOROUGH ON INDIAN STATES, 1842.

(Instructions to Political Officers,  
April 26, 1842).

1. The Governor-General deems it expedient that the conduct of all the Political Agents of the Government should be guided by one clearly understood principle and I am therefore directed to convey to you the following instructions for your future observance.

2. The Governor-General enjoins that you will on all occasions manifest the utmost personal consideration and respect for the several native princes with whom you may communicate. You will consult and attend to their personal wishes, you will give them whenever you may be requested so to do, or whenever it may appear to you to be required for their interest or that of the British Government, with which theirs is particularly identified, such advice as may seem best calculated to conduce to their comfort and to their prosperity and their honour; but you will not unnecessarily intrude with such advice on occasions not requiring it for such high and just objects, but leave them in the ordinary concerns merely of their families and their courts, not only without control, but without observation.

Utmost personal consideration and respect' to be shown to Princes

Conditions under which advice should be given to Princes

3. You will consider yourself to be placed near the native princes, to whom you may be deputed, as the representative of the friendship as much as of the power of the British Government, and you will be mindful that even the necessary acts of authority may be clothed with the veil of courtesy and regard.

Authority to be exercised under veil of courtesy and regard

4. You will distinctly understand that the further extension of its dominions forms no part of the policy of the British Government; that it is desirous on all occasions of respecting the independence of native states, and that satisfied with the extent of its own rule, it has no other wish than that every state within the limits of India, should freely exercise its rights as recognised by Treaty, and contribute by the maintenance, by its own means, of peace and good govern-

Annexation not wanted

ment in its dominions; to the general happiness of the whole people.

5. But while you will proceed upon the conviction that these are the sincere wishes of the British Government, you will likewise understand that it will view **Disturbance of peace of India not to be allowed** with the severest displeasure, such an exercise of its rights by any power as may have a tendency to disturb the public peace of India.

6. Such disturbance of the public peace whether effected by direct hostilities between States or by the outbreaks which the badness of a government may provoke, or its weakness permit could not have existence without immediately affecting the interests of the subjects of the British Government whom it is its first duty to protect.

7. But the Governor-General feels that the Government has yet another duty to perform—that **Responsibility of British Government for happiness of India** placed in the possession of great power, it is deeply responsible to Providence for the exercise of that power in such manner as may most conduce to the happiness of all tribes and nations within the limits of India, under whatever form of rule they may severally be placed.

8. The Governor-General has advisedly selected the moment of victory<sup>1</sup> for laying before you for your guidance these principles of justice and moderation. They are the principles upon which his policy will ever be founded, adopted after deliberate reflection and as little liable to be changed by reverse as they have been by success.

9. You are directed to communicate the purport of this dispatch as contained in the accompanying Persian Memorandum, directly or through your subordinates to all the princes and chiefs with whom you are deputed to communicate.

<sup>1</sup> Over Afghanistan.

# **70. LORD ELLENBOROUGH'S TREATY WITH SINDHIA, 1844.**

(January 13, 1844)

*Article 6.* And whereas the British Government is bound by Treaty to protect the person of His Highness the Maharajah, his heirs and successors, and to protect his dominions from foreign invasion, and to quell serious disturbances therein, and the army now maintained by His Highness is of unnecessary amount, embarrassing to His Highness's Government and the cause of disquietude to neighbouring states, it is therefore further agreed that the military force of all arms hereafter to be maintained by His Highness shall at no time exceed nine thousand men

British  
liabilities

Restriction  
on size of  
Sindhia's  
army

\* \* \* \*

*Article 8.* And inasmuch as it is expedient to provide for the due administration of the government during the minority of His Highness it is further agreed that during such minority the persons entrusted with the administration of the government shall act upon the advice of the British Resident in all matters whereon such advice shall be offered, and no change shall be made in the persons entrusted with the administration without the consent of the British Resident acting under the express authority of the Governor-General.

British  
control  
during  
minority  
of Sindhia

# **71. LORD ELLENBOROUGH'S LETTER TO HOLKAR,<sup>1</sup> 1844.**

(November 9, 1844).

The intelligence of the early death of the late Maharajah<sup>2</sup> was a cause of much grief to me. By that event the guddee of the Holkar State became vacant, there being no one of the Holkar family remaining entitled to succeed to the principality or to adopt an heir to the guddee.

<sup>1</sup> For the historical background, see *Atchison, Treaties, Engagements, and Sanads*, Vol. IV, 1864, pp. 285-288.

<sup>2</sup> Hari Rao Holkar.

British  
control over  
succession

It became necessary for the Governor-General to make an arrangement for the administration of the government of the Holkar principality.

I was induced to direct the British Resident at Indore to nominate your Highness<sup>1</sup> to the occupation of the vacant guddee.

It is the intention of the British Government that the chiefship should descend to the heirs male of your Highness's body lawfully begotten, in due succession, from generation to generation.

British  
control over  
administra-  
tion during  
minority

Until the period of your Highness coming of age the affairs of the government will be administered in your behalf, as at present, by a competent Regency acting under the general superintendence, and in all matters of importance the instructions, of the British Resident.

## 72. LORD DALHOUSIE ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES.<sup>2</sup>

... it is often maintained that such is the misgovernment of His Highness the Nizam, that so great are the violence and lawless confusion which pervade every part of his dominions, that it has become the moral duty of the British Government as the paramount power in India to assume to itself the government of His Highness' dominions in order to correct the evils of his rule and to rescue his subjects from the sufferings which are alleged to proceed therefrom.

Mal-adminis-  
tration no  
justifica-  
tion for  
intervention

I desire to repudiate all adhesion to a doctrine which leads in my humble judgment to a system of unwarranted and officious meddling.

In too many instances I fear it proceeds not from sentiments of enlarged benevolence but from the promptings of ambitious greed. Even where the motive from which it springs is pure and sincere, the doctrine is in my view not the less unsound. The

<sup>1</sup> Tukaji Rao Holkar.

<sup>2</sup> See Panikkar, *The Evolution of British Policy Towards Indian States*, pp. 67-68.

acknowledged supremacy of the British power in India gives to it the right, and imposes upon it the duty, of maintaining by its influence and (if need be) compelling by its strength the continuance of general peace. It entitles it to interfere in the administration of Native Princes if their administration tends unquestionably to the injury of the subjects or of the allies of the British Government.

Occasions  
when  
intervention  
is justified

But I recognise no mission confided to the British Government which imposes on it the obligation or can confer upon it the right of deciding authoritatively on the existence of native independent sovereignties and of arbitrarily setting them aside, whenever their administration may not accord with its own views, and although their acts in no way affect the interests or security of itself or its allies.

Still less can I recognise any such property in the acknowledged supremacy of the British Government in India as can justify its ruler in disregarding the positive obligations of international contracts, in order to obtrude on Native Princes and their people a system of subversive interference which is unwelcome alike to people and Prince.

British  
agreements  
with States  
described as  
'inter-  
national  
contracts'

### 73. LORD DALHOUSIE ON RELATIONS WITH INDIAN STATES.

#### I. Doctrine of Lapse.

I take occasion of recording my strong and deliberate opinion, that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or to neglect such rightful opportunities of acquiring territory or revenue as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all heirs of every description whatsoever, or from the failure of heirs natural, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu law.

Right of  
British  
Government  
to acquire  
territory on  
failure of  
heirs

## II. Annexation of Satara.

The words "heirs and successors"<sup>1</sup> must be read in their ordinary sense, in the sense in which they are employed in other treaties between states. And in the absence of all evidence or reasonable presumption, founded on known facts, or on some special wording of the British instrument, in favour of a wider interpretation, those words cannot be construed to secure to the Rajas of Sattara any other than the succession of heirs natural, or to grant to them the right of adopting successors to the raj without that sanction of the *sovereign state*, which may be given, or may be withheld, and which, by ordinary and invariable practice, is necessary to the validity of such an act of adoption by the prince.<sup>2</sup>

Inter-pretation of treaty of 1819

Adoption without British sanction not valid

## III. Annexation of Nagpur.

The kingdom of Nagpore became British territory by simple lapse, in the absence of all legal heirs. The kingdom, which had been granted to the reigning Raja by the British Government when it had become forfeited by the treachery of Appa Sahib,<sup>3</sup> was left without a

<sup>1</sup> Treaty with Satara, 1819: "The British Government agrees to give the country or territory specified to the government or state of His Highness Maharaja Chhatrapati. His Highness . . . and His Highness's sons and heirs and successors are perpetually to reign in sovereignty over the territory. . . ."

<sup>2</sup> In confirming the action of the Governor-General the Court of Directors observed, "We are fully satisfied that by the general law and custom of India, a dependent principality like that of Satara cannot pass to an adopted heir without the consent of the Paramount Power; that we are under no pledge, direct or constructive, to give such consent; and that the general interests committed to our charge are best consulted by withholding it." V. A. Smith says (*Oxford History of India*, p. 704), "That clear ruling places on the shoulders of the Home Government the full responsibility for all the cases of annexation by reason of lapse effected by Lord Dalhousie."

<sup>3</sup> In 1817 Appa Sahib attacked Jenkins, the Resident at



claimant when the Raja died. No son had been born to his Highness; none had been adopted by him; none. . . was adopted at the Raja's death by the Ranecs, his widows. There remained no one male of the line who descended from the stock and bore the name of Bhonsla. The British Government, therefore, refused to bestow the territory in free gift upon a stranger, and wisely incorporated it with its own dominions.

No adopted heir

#### IV. Annexation of the Carnatic.

During the last autumn the Nawab of the Carnatic very suddenly died.

As the treaty by which the *Masnad* of the Carnatic was conferred on his Highness's predecessor was exclusively a personal one; as the Nawab had left no male heir; and as both he and his family had disreputably abused the dignity of their position, and the large share of public revenue which had been allotted to them; the Court of Directors has been advised to place the title of Nawab in abeyance, granting fitting pensions to several members of the Carnatic family.

Grounds of annexation

#### V. Resumption of the Tanjore pension.

Very shortly after the death of the Nawab of the Carnatic, the Raja of Tanjore deceased. He left no son, and no male heir, direct or indirect, who bore his name. The Honourable Court was therefore advised to resume the large stipend which the Raja had enjoyed, as a lapse to the Government, pensions being granted to the members of the family as in all similar cases. . .

Nagpur, but his troops were defeated in the battle of Sitabaldi and he surrendered. Lord Hastings deposed him and annexed his dominions lying to the north of the Narmada. The remaining portions were granted to the Raja whose death led to the extinction of the State in Lord Dalhousie's time.

## **APPENDIX B**

### **Notes on Documents**

#### **1. GROWTH OF THE EAST INDIA COMPANY'S TERRITORIAL POWER IN BENGAL.**

This document should be read along with Document Nos. 3 and 4.

See Firminger, *Historical Introduction to the Bengal portion of the "Fifth Report,"* Chapters I, VI, VII.,

For treaty with Najm-ud-daula, see A. P. Das Gupta, *Studies in the History of the British in India.*

#### **2. CLIVE'S VIEWS ON BRITISH POLICY. 1765.**

This document shows : (i) Clive was unwilling to accept responsibility for direct administration : the Nawab was to be upheld as a convenient puppet (See p. 7). (ii) Clive was fully alive to the temptations open to the Company's servants.

#### **3. GRANT OF DEWANI TO THE EAST INDIA COMPANY BY EMPEROR SHAH ALAM. 1765**

For the historical background, see Sir J. N. Sarkar, *Fall of the Mughal Empire*, Vol. II ; A. L. Srivastava, *Shuja-ud-daula* ; Mill and Wilson, *History of British India*. See also Firminger, *Introduction to the "Fifth Report,"* Chapter VIII.

#### **4. CLIVE'S VIEWS ON THE POSITION OF THE NAWAB OF BENGAL.**

Here we find Clive's justification of Double Government. This document should be read along with Document No. 2.

#### **5. RICHARD BECHER ON THE BAD EFFECTS OF DOUBLE GOVERNMENT, 1769.**

See Firminger, *Introduction to the "Fifth Report,"* Chapter IX.

#### **6. BOLTS ON THE BAD EFFECTS OF DOUBLE GOVERNMENT, 1772.**

See Firminger, *Introduction to the "Fifth Report,"* Chapter X. Document Nos. 5 and 6 should be read together.

#### **7. THE COMPANY AS DEWAN, 1772.**

See Monckton Jones, *Warren Hastings in Bengal* ; Firminger, *Introduction to the "Fifth Report,"* Chapters XI, XII.

#### **8. WARREN HASTINGS ON DEFECTS IN THE EAST INDIA COMPANY'S SYSTEM OF GOVERNMENT, 1773.**

This is an interesting and important document, throwing

light on some of the glaring defects in the Company's administration in Bengal and also on the statesmanship of Warren Hastings. We may compare his suggestions with the relevant provisions in the Acts of 1773 and 1784.

9. THE EAST INDIA COMPANY ACT, 1773.

For the circumstances leading to the passing of the Act, see Mill and Wilson, *History of British India*, Book IV, Chapter IX ; Pemberton, *Lord North*.

For the defects in the Act, see I. Banerjee, *The Supreme Court in Conflict* ; A. P. Das Gupta, *The Central Authority in British India* ; Firminger, *Introduction to the "Fifth Report,"* Chapter XIII.

10. LORD NORTH'S SPEECH ON THE EAST INDIA COMPANY BILL, 1773.

The Parliamentary debates on the Regulating Act are for the most part unpublished. *The Parliamentary History* gives only a few speeches in a summarised form. Pemberton (*Lord North*, p. 175) says that in Sir Henry Cavendish's reports among the Egerton Mss. they fill several volumes.

11. PETITION OF THE EAST INDIA COMPANY TO THE HOUSE OF COMMONS ON LORD NORTH'S EAST INDIA COMPANY BILL, 1773.

12. BURKE'S SPEECH ON LORD NORTH'S EAST INDIA COMPANY BILL, 1773.

13. PROTEST OF 13 PEERS AGAINST LORD NORTH'S EAST INDIA COMPANY BILL.

These three documents should be read together. The criticism against the Bill is a clear vindication of the Whig respect for rights of property, but we look in vain for any trace of anxiety for the good government of the Company's territories in India.

14. LETTERS PATENT ESTABLISHING A SUPREME COURT AT FORT WILLIAM, 1774.

17. WARREN HASTINGS ON THE CONFLICT BETWEEN THE GOVERNOR-GENERAL-IN-COUNCIL AND THE SUPREME COURT, 1776.

19. THE COURT OF DIRECTORS ON THE SUPREME COURT, 1777.

20. THE GOVERNOR-GENERAL-IN-COUNCIL ON THE SUPREME COURT, 1780.

21. WARREN HASTINGS ON SADAR DEWANI ADALAT, 1780.

The viewpoint of the Supreme Court is explained in detail by

Stephen in *The Story of Nancomar and the Impeachment of Sir Elijah Impey*. The case for the Executive will be found in I. Banerjee, *The Supreme Court in Conflict*.

# 15. THE SUPREME COURT ON THE POSITION OF THE NAWAB OF BENGAL.

See Firminger, *Introduction to the "Fifth Report,"* Chapter I.

# 16. WARREN HASTINGS ON HIS CONFLICT WITH THE COUNCIL, 1776.

See Mill and Wilson, *History of British India*; Weitzmann, *Warren Hastings and Philip Francis*.

# 18. PLAN OF WARREN HASTINGS TO EXTEND BRITISH INFLUENCE IN INDIA, 1777.

See Davis, *Warren Hastings and Oudh*.

# 22. THE EAST INDIA COMPANY ACT, 1780.

The object of this Act was to explain and amend the Regulating Act. The famous Patna Case (I. Banerjee, *The Supreme Court in Conflict*, pp. 30—31, 135) was directly responsible for some of its provisions. See Cowell, *Courts and Legislative Authorities*.

# 23. FOX'S INDIA BILLS, 1783.

See C. Grant Robertson, *England Under the Hanoverians*, pp. 299—302.

Robertson says, "The bill was a sincere and statesman-like effort to deal with a great problem on comprehensive lines; but George III, Pitt, and Thurlow, and the East India Company did not consider nor apparently wish to consider it on its merits. Fox, not the imperial problem, was made the issue."

# 24. THE EAST INDIA COMPANY ACT, 1784.

# 25. PITT'S SPEECH ON THE INDIA BILL, 1784.

J. Holland Rose observes (*The Life of William Pitt*, Vol. I, pp. 223—224), "While wielding despotic authority in India, the new Viceroy was but an adjunct of the British constitutional machine. It is perhaps the highest of Pitt's achievements that he saw how to combine two ideals of Government, the oriental and the occidental, in a way that conduced to vigour of action in Bengal, and did not impair popular progress at home. While investing the real ruler of India with powers far greater than those wielded by Warren Hastings, he subordinated them to the will of King and Parliament.... Has any other statesman

succeeded in the task of linking an oriental autocracy with the ancient parliamentary system of a Teutonic race?"

Lord Curzon's view (*British Government in India*, Vol. II, p. 69) on Pitt's Act is as follows: "Had a committee been assembled from the padded chambers of Bedlam, they could hardly have devised anything more extravagant in its madness, or more mischievous in its operation. To it must be attributed many of the astounding errors and contradictions that characterised our Indian policy at that time."

For Pitt's system at work, see Kaye, *Administration of the East India Company*, C. H. Philips, *The East India Company, 1784—1834*.

#### 26. FOX'S SPEECH ON PITT'S INDIA BILL, 1784.

We may compare Fox's criticism with the observations of Lord Palmerston (Document No. 53) and Lord Derby (Document No. 55).

#### 27. BURKE'S SPEECH ON THE IMPEACHMENT OF WARREN HASTINGS.

These extracts incorporate Burke's views on the nature of the Company's government in India and are, therefore, of permanent interest and value.

#### 28. LORD CORNWALLIS ON INTERFERENCE OF DIRECTORS IN APPOINTMENTS OF OFFICERS, 1789.

This extract brings out one of the evils of the patronage system and throws light on the weakness of the administration.

#### 29. LORD CORNWALLIS ON INSUBORDINATION OF MADRAS GOVERNMENT, 1790.

This extract throws light on the working of Sections 31—36 of Pitt's India Act.

#### 30. LORD CORNWALLIS ON THE RENEWAL OF THE EAST INDIA COMPANY'S CHARTER, 1790.

#### 33. CHARTER ACT OF 1793.

These two documents should be read together.

See C. H. Philips, *The East India Company, 1784—1834*.

#### 31. LORD CORNWALLIS ON RELATIONS BETWEEN GOVERNOR-GENERAL AND COUNCIL, 1790.

#### 32. INDEPENDENT POWERS OF GOVERNORS, 1793.

We may compare the experience of Lord Cornwallis with that

of Warren Hastings. The difference was partly due to Parliamentary intervention, but personal equation and change of political atmosphere were certainly not negligible factors.

34. LORD WELLESLEY ON INDIAN ADMINISTRATION, 1800.

35. LORD WELLESLEY ON CIVIL SERVICE, 1800.

Lord Wellesley is generally known as an aggressive annexationist, but he was an empire-builder in a comprehensive sense. Realising that the Company was no longer solely, or even primarily, a commercial corporation, he tried to create a Civil Service which could efficiently govern a great and growing empire. His military triumphs should not be allowed to eclipse the importance of his work for administrative consolidation.

For the development of the Company's Civil Service, see A. K. Ghosal, *The Civil Service in India*.

36. COMPLAINT OF THE COURT OF DIRECTORS AGAINST THE BOARD OF CONTROL, 1816.

Lord Hobart, afterwards fourth Earl of Buckinghamshire, was probably<sup>1</sup> nominated as Governor-General by the Court of Directors on December 24, 1793. But Sir John Shore had already reached Calcutta (March, 1793) and taken charge from Lord Cornwallis (October, 1793). Lord Hobart was then sent as Governor of Madras (September, 1794) 'with a clear promise of the succession in Bengal'. He was recalled by the Court of Directors in 1798 as a result of his violent quarrel with Sir John Shore over the affairs of the Nawab of the Carnatic.<sup>2</sup> He became in succession Secretary of State for War and the Colonies (1801—1804), Chancellor of the Duchy of Lancaster (1805, 1812), Postmaster General (1806—1807) and President of the Board of Control (1812—1816). Lord Ripon's biographer says, "It was from his maternal grand-father (Earl of Buckinghamshire) that Goderich (Lord Ripon) derived the foundations of all his views on Indian politics. The fourth Earl of Buckinghamshire was an Indian statesman to whom sufficient justice has not been done he was a man of strong character, of great courage, and, though a staunch Tory, capable of very definite liberal opinions. He first distinguished himself as a singularly upright and public-spirited Governor of Madras, where he won for himself the confidence and affection

<sup>1</sup> Lord Curzon, *British Government in India*, Vol. II, p. 81.

<sup>2</sup> See *Life of Lord Teignmouth*, Vol. I, pp. 247, 297, 353, 393.

of the whole Presidency. But it was during his short tenure of the Board of Control in Lord Liverpool's Administration that he gave evidence of the larger statesmanship which entitles him to rank among the pioneers of Liberal reform in India. It was he who, on the occasion of the renewal of the Charter in 1813, abolished the trade monopoly of the Company and threw open the commerce of India to the world. His speeches on that occasion anticipated in broad outline much of the modern Liberal doctrine of Indian administration. He startled the Nabobs and ex-Viceroy by avowing his readiness to abolish the Charter altogether in the event of any recalcitrancy on the part of the Company. He strongly emphasized the direct responsibility of the Crown for the welfare of the country, and declared that the United Kingdom could not divest itself of its duty to promote 'the moral improvement and social happiness of the people' and even to assure 'the security of their property and personal freedom'. These were bold and unfamiliar words a century ago. Buckinghamshire, in short, was a precursor of Bentinck, of whom Goderich said many years afterwards that he had always 'endeavoured to follow in his footsteps.'"<sup>1</sup>

A modern writer says, "In that position (*i.e.*, as Governor of Madras) he had shown himself to be energetic but also headstrong and quarrelsome. He was particularly ill-disposed towards the Directors, who had not only supported Sir John Shore against him, but had also strongly criticised his general policy at Madras, had heartily concurred in his recall, and in his opinion, had finally added insult to injury by cavilling at granting him a pension."<sup>2</sup> Knowing neither how to manage nor conciliate others, Buckinghamshire was a most unsuitable head of the Board. Buckinghamshire's conduct, evincing throughout a petty desire to humiliate the Directors, had been reprehensible; by his blunders he alienated a well-disposed Court of Directors and proved himself to be totally unsuited to his position."<sup>3</sup>

For details of his quarrel with the Directors, see C. H. Philips, *The East India Company, 1784-1834*, Chap. VII.

<sup>1</sup> Lucien Wolf, *Life of Ripon*, Vol. I, pp. 100-101.

<sup>2</sup> After his recall from Madras he was consoled with a pension of £1,500 per annum and a summons, during his father's lifetime, to the House of Lords.

<sup>3</sup> C. H. Philips, *The East India Company, 1784-1834*, pp. 183, 208.

37. SIR THOMAS MUNRO ON ULTIMATE AIM OF  
BRITISH RULE IN INDIA, 1824.

See K. N. V. Sastri, *The Munro System of British Statesmanship in India*.

38. POSITION OF THE COURT OF DIRECTORS, 1829.

46. LORD ELLENBOROUGH ON THE COURT OF DIRECTORS, 1844.

These two documents should be read together.

Lord Curzon observed, "With better judgment and less vanity Ellenborough might have been a considerable ruler : for he had conspicuous talents, and I remember Mr. Gladstone telling me that he thought him the best speaker of his day in the House of Lords. As it is, he was the shortest-lived and the least successful of all the Governors-General." For a favourable view of Lord Ellenborough's administration, see H. M. Durand, *Life of Sir Henry Durand*, Chap. IV. It is said that the main reason of the hostility of the Court of Directors to Lord Ellenborough was his attempt to exalt the army at the expense of the Civil Service : " the civil administration of the country (*i.e.*, India) was the patrimony of the directors, and afforded a rich provision for their relatives and all having interest with them. Of course the Civil Service was accordingly a favoured service. Deserving soldiers were given appointments (by Lord Ellenborough) hitherto reserved for the *protégés* of the Court, and the whole interest of the Court and Civil Service turned against him. He may have gone too far, as Kaye contends, and exalted the army unduly at the expense of the civilians ; but the most moderate reforms in that direction would have been sufficient to arouse the undying hostility of the privileged class. 'The selection of military men,' wrote the Court, 'for important offices previously held by civilians can hardly fail to impair the efficiency of the Civil Service of India.' This was the head and front of Lord Ellenborough's offending, and this led to his recall. His successors, Lord Hardinge and Lord Dalhousie, were always most careful to avoid any such mistake ; and they were consequently enabled to carry, without opposition, measures which in Lord Ellenborough's time would certainly have been denounced by the authorities in Leadenhall Street."

39. LORD WILLIAM BENTINCK ON THE RELATIONS  
BETWEEN THE SUPREME AND THE SUBORDINATE  
GOVERNMENTS, 1831.

It is interesting to compare Lord William Bentinck's views with the relevant sections of the Charter Act of 1833.



## 40. LORD WILLIAM BENTINCK ON THE CIVIL SERVICE, 1831.

We may compare this document with Document No. 35.

## 41. CHARTER ACT OF 1833.

## 42. MACAULAY'S SPEECH ON THE CHARTER ACT OF 1833.

## 43. DESPATCH ON THE CHARTER ACT OF 1833 FROM THE COURT OF DIRECTORS TO THE GOVERNMENT OF INDIA, 1834.

For the historical background of the Act, see C. H. Philips, *The East India Company, 1784-1834*, Chapter X.

No. 43 deserves careful study, for it explains the purposes behind the Act. This despatch was probably composed by James Mill. Particular attention should be paid to the importance attached to the question of 'free ingress of Europeans.' In reply to some queries of the Board of Control Raja Ram Mohan Roy observed in 1831 that the opening of India to European colonisation 'could only be regarded as adopted for the purpose of entirely supplanting the native inhabitants and expelling them from the country.' He also pointed out that the existing courts were 'by no means competent to exercise an adequate control over British-born subjects in the interior.'

On Section 39 of the Act, see Bisheshwar Prasad, *The Origins of Provincial Autonomy*, Chapter I.

With regard to Section 56 the following remarks of Sir George Campbell (*Memoirs of My Indian Career*, Vol. I, pp. 228-229) may be noted :

"While the Governor-General in Council was the Governor-General of Bengal, and the Central Government resident in Calcutta directly administered the Bengal territories, those territories had the attention of a strong Government in theory at least ; they were recognised as a most important charge both of the Governor-General himself and of the Members of his Council.

But when in 1834 the Governor-General and his Council became Governor-General of India in Council, and the Governor-General became Governor of Bengal without a Council, a great change in Bengal administration took place. Lord William Bentinck probably never lost his interest in Bengal, but in Lord Auckland's time more distant politics wholly engaged the attention of the Government of India. In the days of his successors new kingdoms came rapidly under British sway and engaged more immediate attention. The Governors-General were constantly

absent in the Upper Provinces for years together, and the Government of Bengal was generally entrusted to the Senior Member of Council, sometimes an experienced civil administrator, sometimes a military officer entirely without such experience ; but always in an uncertain and casual and temporary sort of way. The Governor-General sometimes took charge, and a strong man made a strong will felt ; but it was totally impossible that he could master or attend to the details of an administration very widely different from those with which he was brought more immediately in contact. Under this system the real administration in details was very much left to two important bodies—the Sudder Court superintended judicial affairs, and the Board of Revenue obtained a much larger authority in revenue matters than in other parts of India."

#### 44. ACT ESTABLISHING THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, 1833.

The Judicial Committee of the Privy Council sits as a court, and hears colonial and Indian appeal cases, also ecclesiastical appeals and appeals from prize courts. It does not pronounce judgment, but advises the Sovereign to give judgment in a particular way.

From the standpoint of India the constitutional importance of the Judicial Committee lies in the fact that it serves as one of the links between India and Britain. Section 208 of the Government of India Act, 1935, allows appeals to His Majesty in Council from decisions of the Federal Court in certain cases.

#### 45. LORD ELLENBOROUGH ON GOVERNOR-GENERAL'S COUNCIL.

Lord Ellenborough's interpretation of Section 40 of the Charter Act of 1833, relating to the position of the 'Fourth Ordinary Member of Council', should be read along with the views of the Court of Directors explained in paras 21—23 of the Despatch of 1834. (Document No. 43).

#### 47. THE CHARTER ACT OF 1853.

#### 48. SIR CHARLES WOOD'S SPEECH ON THE CHARTER ACT OF 1853.

For the historical background, see Lee-Warner, *The Life of the Marquis of Dalhousie*, Vol. II, Chapter VII.

#### 49. LORD DALHOUSIE ON THE HEAVY WORK OF THE GOVERNOR-GENERAL.

#### 50. LORD DALHOUSIE ON THE RELATIONS BETWEEN THE 'HOME' GOVERNMENT AND THE GOVERNMENT OF INDIA.

51. LORD DALHOUSIE ON THE LEGISLATIVE COUNCIL.
52. SIR CHARLES WOOD ON THE LEGISLATIVE COUNCIL.  
See Lee-Warner, *The Life of the Marquis of Dalhousie*.
53. LORD PALMERSTON'S SPEECH ON GOVERNMENT  
OF INDIA BILL, 1858.
54. THE GOVERNMENT OF INDIA ACT, 1858.
55. LORD DERBY'S SPEECH ON THE GOVERNMENT OF  
INDIA BILL, 1858.
56. LORD DALHOUSIE ON TRANSFER OF INDIA  
TO THE CROWN, 1858.
57. PETITION FROM THE EAST INDIA COMPANY  
TO PARLIAMENT, 1858.
58. THE QUEEN'S PROCLAMATION, 1858.

These documents should be read together for a thorough understanding of the causes and significance of the formal transfer of India to the British Crown. It was 'rather a formal than a substantial change', for the Board of Control had long enjoyed the substance of power. (Compare Document Nos. 38, 46). The formal existence of the East India Company continued until 1874 for the purpose of financial liquidation in accordance with the Charter Act of 1833.

The designation 'Viceroy' was used for the first time in the Queen's Proclamation. "The term Governor-General alone is always employed in the Acts both of the British Parliament and the Indian Legislature, in the Warrant of Appointment of the Governor-General, and in the Notification of Appointment in the 'London Gazette.' On the other hand, the double title 'Viceroy and Governor-General' or 'Governor-General and Viceroy,' which was first employed by Queen Victoria in the Royal Proclamation of 1st November, 1858, is used in the Warrants of Precedence and in the Statutes of the Knightly Orders. The distinction therefore is held to be that where the Governor-General is referred to as the statutory head of the Government of India he is designated as Governor-General: where he is regarded as representative of the Sovereign he is spoken of as Viceroy. The latter title however has no statutory sanction, and is the result merely of usage and convention."

59. SUBSIDIARY TREATY WITH MYSORE, 1799.
60. LORD WELLESLEY'S TREATIES WITH HYDERABAD.
61. LORD WELLESLEY'S TREATY WITH SINDHIA, 1804.
62. LORD WELLESLEY'S TREATY WITH BHARATPUR, 1805.

### 63. ARTHUR WELLESLEY ON LORD WELLESLEY'S RELATIONS WITH INDIAN STATES, 1806.

For the historical background, see P. E. Roberts, *India Under Wellesley*; K. M. Panikkar, *The Evolution of British Policy Towards Indian States*; Lee-Warner, *The Native States of India*, Chapter III.

Sir Thomas Munro's objections to the Subsidiary System deserve notice. He observed, "if the British Government is not favourable to the improvement of the Indian character, that of its control through a subsidiary force is still less so." Secondly, he pointed out that the inevitable tendency of the Subsidiary System was "to bring every Native State into which it is introduced sooner or later under the exclusive dominion of the British Government." Thirdly, he emphasized that the success of the system depended largely on the wisdom of the Residents. Instructions to exercise 'superintending influence with caution, delicacy and moderation' were not enough.<sup>1</sup>

With regard to Mysore, it should be noted that it was in accordance with the terms of the treaty of 1799 that Lord William Bentinck took the State under British administration in 1831. The misgovernment of the Raja had provoked a rebellion, and the Governor-General felt it necessary to apply that drastic remedy. The 'rendition of Mysore' (*i.e.*, the restoration of the Raja's rule) took place in 1881 as a result of Lord Ripon's liberal policy.

### 64. LORD HASTINGS ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES.

65. LORD HASTINGS' TREATY WITH HOLKAR, 1818.

66. LORD HASTINGS' TREATY WITH BHOPAL, 1818.

67. LORD HASTINGS' TREATY WITH MEWAR, 1818.

For the historical background, see Mehta, *Lord Hastings and the Indian States*; Panikkar, *The Evolution of British Policy Towards Indian States*; Lee-Warner, *The Native States of India*, Chapter IV.

### 68. LORD AMHERST'S TREATY WITH SIROHI, 1823.

The most interesting article (4) is that which provides for British interference in internal affairs,

### 69. LORD ELLENBOROUGH ON INDIAN STATES, 1842.

<sup>1</sup>K. N. V. Sastri, *The Munro System of British Statesmanship in India*, p. xli.

## 70. LORD ELLENBOROUGH'S TREATY WITH SINDHIA, 1844.

## 71. LORD ELLENBOROUGH'S LETTER TO HOLKAR, 1844.

It has been said that Lord Ellenborough "was, perhaps, the first Governor-General who fully realized the position in which the British Government now stands towards the Native States of India. Averse from wholesale annexation, as he showed in the cases of Gwalior and Indore;<sup>1</sup> both of which states afforded him opportunities which Lord Dalhousie would hardly have allowed to pass, he was yet determined that our supremacy should be understood and respected by all, and that the Native States should for the future submit to such a measure of control as might be necessary for the general order and welfare of the Empire. Clearly perceiving that doctrines of European international law were not applicable in their entirety to our relations with those states, he refused to permit gross misgovernment or disorder in any principality within our external frontier."<sup>2</sup>

## 72. LORD DALHOUSIE ON BRITISH INTERVENTION IN INTERNAL AFFAIRS OF INDIAN STATES.

## 73. LORD DALHOUSIE ON RELATIONS WITH INDIAN STATES.

See Lee-Warner, *The Native States of India*, Chapter V; Panikkar, *The Evolution of British Policy Towards Indian States*.

<sup>1</sup> For the case of Gwalior, see Smith, *Oxford History of India*, pp. 686-687.

Lord Ellenborough placed a civilian, Robert Hamilton, in charge of the Central India Agency, and "the new agent distinguished himself shortly after his arrival by the unauthorized elevation of young Tookaji Holkar to the Chiefship of Indore with all the formalities usual in the case of an hereditary successor. This step lost the Government the opportunity of marking an important line of policy in our dealings with our feudatories, for the young chief was not a lineal heir, and Lord Ellenborough had proposed to recognise his succession on certain suitable terms. Hamilton was severely censured. . . ." (H. M. Durand, *Life of Sir Henry Durand*, p. 82).

<sup>2</sup> H. M. Durand, *Life of Sir Henry Durand*, p. 83.



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